Office Supreme Court, U.S.
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No. 80-1781

In the Supreme Court of the United States

OCTOBER TERM, 1980

WILLIAM H. MCNICHOLS, JR., ET AL.,
PETITIONERS,

v.

MALCOLM BALDRIDGE, SECRETARY OF COMMERCE, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 24, 1981
CERTIORARI GRANTED JUNE 15, 1981

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DISTRICT COURT DOCKET ENTRIES

PLAINTIFFS

WILLIAM H. McNICHOLS, JR., et al.

DEFENDANTS

PHILIP M. KLUTZNICK, et al.

CAUSE

Complaint for violation of the Freedom of Information Act 5 USC 552 (a) & Complaint arising under the laws of the U.S. relating to the taking of the decennial census and to the apportionment of Congressmen in the House of Representatives 13 USC 1 et seq.

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DATE	NR.	PROCEEDINGS
9/3	X	COMPLAINT — pd Issued Summons

	X	MOTION for Temporary Restraining Order and Nominal Bond . . . by Plft's.
		HEARING (JRC) Motion for TRO and for Nominal Bond . . . Statements of counsel . . . With Exhibits . . . Preliminary Injunction hearing set for 9/15/80 9:00 am. Briefs by Plfts due 9/10/80. Defts answers due 9/12/80 . . . eod 9/3/80 (TRO Exhibits in Brown env.)
9/8	X	Application for Preliminary Injunction . . . COD
		Plf Memo Brief-Prel Injunction
9/12	X	Transcript of Proceedings on Plf Motion for TRO and Nominal Bond
		Def Brief in Opposition to Motion for Prel Injunction . . . COM
		Supp Authorities Prel Injunction . . . COM . . . COM
9/16	X	MOTION Of Plf For Expedited Production of Documents . . . COD unsgd
9/15	X	HEARING Plf Motion for Prel Injunction . . . witnesses . . . exhibits . . . closing argument . . . matter taken under advisement . . . eod 9/17/80
9/16	X	HEARING Plf Motion for Expedited Production of Documents . . . ORDERED local rule refiling of discovery requests waived and plf Exhibit 17 rec'd and made part of record . . .

leave granted def counsel to make oral motion for protective order and it will be considered . . . def counsel may supplment record w/written motion. plf motion GRANTED subject to the following: only info to be produced is that concerning vacant housing units and then only information re: addresses, personal info to be deleted . . . no person not having taken oath prescribed by Bureau and statute shall have access to info provided . . . when order reduced to writing, it shall be served on all city employees that will work w/info . . . info provided is to be used only for census adjustment purposes . . . def may apply for specific protective orders re: specific info . . . Bureau may apply for and recover any reasonable expenses necessitated by this order . . . Bureau given option of accompanying city employees on cks of addresses provided . . . plf to submit proposed order court makes positive findings re: 28 USC 1292(b) and this finding will be incl in written order for appeal purposes . . . bond set of $25 subject to increase upon proper showing . . . eod 9/17/80

9/17 X Transcript of Court's Ruling on Motion for Expedited Production of Documents

X ORDER (JRC) . . . defs shall produce FARs for Denver to plf or produce list derived from FARs which lists ad-

dresses of living units in Denver which Bureau determined vacant 4/1/80 . . . defs shall delete names or other references which might identify respondents to census . . . every employee etc having access to info provided shall take oath of secrecy and confidentiality as required of personnel of Bureau of Census . . . plfs shall not allow any person subject to their control and not subject to oath access to info . . . cy of this Order to be served on every employee etc having access to info and such employee ordered not to disclose such info to any person . . . info provided pursuant to this Order not to be used for any purpose except to seek correction or adjustment of population figures for Denver 1980 census . . . info provided shall not be publicized in any way . . . defs may at their dis[cretion] provide one [or] more employee in checking 4/1/80 status of occupancy and if defs follow this procedure and population of Denver is under 500,000, defs may apply to court for reimbursement by City of reasonable expenses . . . plfs by accepting info made available thru this Order accept as condition thereof the foregoing order re: payment of expenses . . . Order effective immediately provided that enforcement of Order is stayed for 7 days from this date . . . cy of Order shall be served

immediately on US Atty for Colo . . . court finds that this Order involved control question of law and an immediate appeal from this Order may materially advance ultimate termination of the litigation . . . COM . . . eod 9/17/80

9/23 MOTION For Transfer to MDL w/brief attached . . . COM

MOTION of Defs for Expedited Response to and Hearing on Def Motion for Transfer. brief attached . . . COM

9/24 Marshal's Return S&C USAG by cert mail 9/5/80; Leo Schilling 9/18/80; Vincent Barabba by cert mail 9/5/80; Philip M. Klutznick Sec of Commerce 9/5/80 by cert mail; US Bureau of Census by cert mail 9/5/80; US Dept Commerce by cert mail 9/5/80. Tackion Grayson agent for US Atty 9/5/80

1980

9/24 X MOTION For Extension of Stay . . . COM

6/25 X MINUTE ORDER (JRC) . . . the stay of this Court's Order of 9/17/80, is extended to 5:00pm 9/29/80 . . . No further extension will be granted by this Court . . . COM . . . eod 9/25/80

X TRANSCRIPT of Proceedings on Plft's. Motion for Preliminary Injunction of 9/15/80

X TRANSCRIPT of Proceedings on Plft's

Motion for Expedited Production of Document of 9/16/80

9/26 Plft's Exhibit List

HEARING (JRC) Motion for TRO . . . Statements . . . Parties announce Stipulation and withdraw application for TRO . . . ORDERED: Stipulation is made an order of this Court . . . The Gov't. will not honor any Cook County detainer without first giving Notice of 30 days to petitioner and counsel . . . eod 9/26/80

9/30 X Copy of ORDER from the Court of Appeals 9/29, that Defendants' PETITION FOR LEAVE TO APPEAL is granted. C.O.M. eod 10/1/80.

X Copy of ORDER from the Court of Appeals 9/29. that Defendant-Appellants' Motion for Stay is *granted*; the Order of the District Court of 9/17/80 is stayed until further order of the Court of Appeals. eod 10/1/80.

Miscellaneous Case Nos. 80-8043 and 80-2023 assigned by the Court of Appeals.

NOTE: Designation Conference set for Tues., 10/7/80, at 8:30 a.m. Transcript Order due: 10/10/80.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No._____

WILLIAM H. MCNICHOLS, JR., individually and in his official capacity as Mayor of the City and County of Denver, and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado,

Plaintiffs,

vs.

PHILIP M. KLUTZNICK, in his official capacity as the Secretary of the U.S. Department of Commerce; VINCENT P. BARABBA, in his official capacity as the Director of the United States Bureau of the Census; LEO C. SCHILLING, in his official capacity as the Regional Director of the United States Bureau of the Census; the U.S. DEPARTMENT OF COMMERCE, one of the lawfully constituted departments of the United States of America; and UNITED STATES BUREAU OF THE CENSUS, one of the lawfully constituted agencies of the U.S. Department of Commerce.

Defendants.

COMPLAINT

Plaintiffs complain, allege and aver as follows:

1. *Jurisdiction.* Jurisdiction is founded on the following:

a. The existence of a Federal question and the amount in controversy. 28 U.S.C. 1331.

b. The existence of a Federal question arising under the laws of the United States relating to the taking of the decennial census and to the apportionment of Congressmen in the House of Representatives. 13 U.S.C. 1, et seq., and 2 U.S.C. 2.a.

c. The existence of a Federal question arising under an Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. 28 U.S.C. 1337.

d. The existence of a Federal question arising out of a claim herein in the nature of mandamus. 28 U.S.C. 1361.

e. The existence of a Federal question arising out of a claim herein for a declaratory judgment. 28 U.S.C. 2201 and 28 U.S.C. 2202.

f. The existence of a Federal question arising out of a claim herein concerning public records and information and relief requested concerning disclosure thereof. 5 U.S.C. 552(a)(4).

g. The existence of a Federal question arising out of a claim herein for Judicial Review of administrative actions. 5 U.S.C. 702, 704, and 706.

h. The existence of a Federal question arising out of a claim herein concerning the violation of rights guaranteed by Article I, Section 2, Clause 3 of, and the Fifth Amendment to, the Constitution of the United States of America.

i. The amount in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs.

2. *Parties.*

a. Plaintiff, WILLIAM H. MCNICHOLS, JR., is a citizen, resident and duly registered and qualified voter of the United States of America, the State of Colorado, and the City and County of Denver. He is the duly elected and acting Mayor of the City and County of Denver.

b. Plaintiff, CITY AND COUNTY OF DENVER, is a municipal corporation of the State of Colorado, duly organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado and has the capacity to sue and be sued (Denver).

c. Defendant, PHILIP M. KLUTZNICK, is the duly appointed and acting Secretary of the Department of Commerce of the United States (Secretary). Defendant, VINCENT P. BARABBA, is the duly appointed and acting Director of the United States Bureau of the Census, pursuant to 13 U.S.C. Section 21 (Director). Defendant, LEO C. SCHILLING, is the duly appointed and acting Regional Director of the United States Bureau of the Census for the Region which includes the City and County of Denver (Regional Director). On the basis of information and belief, it is alleged that, pursuant to 13 U.S.C. Section 4, defendant KLUTZNICK has delegated to defendant BARABBA the performance of all functions and duties relating to the 1980 decennial census that have been imposed by law on the Secretary of Commerce, the Department of Commerce, and the Bureau.

d. Defendant DEPARTMENT OF COMMERCE is a lawfully constituted department in the executive branch of the United States of America (Department); and defendant UNITED STATES BUREAU OF THE CENSUS is one of the lawfully constituted agencies within and of the U.S. Department of Commerce (Bureau).

3. In accordance with the requirements of Art. I, § 2, cl. 3 of the Constitution, the Congress has provided by law for the taking of a decennial census of the population of the United States. 13 U.S.C. §§ 1 *et seq.* Pursuant to 13 U.S.C. § 141, the Secretary of Com-

merce is directed to take such decennial census of the population as of the first day of April, 1980, said date to be known as the "decennial census date," and every ten years thereafter.

4. The tabulation of the total population by states as required for the apportionment of Representatives in Congress among the several states must be completed within nine months of the census date and reported by the Secretary to the President. On the basis of information and belief, it is alleged that the defendant KLUTZNICK has directed the defendant BARABBA to report the total population by states to him during the month of December, 1980.

5. Pursuant to 2 U.S.C. § 2a, the President is required, within one week of the convening of the first regular session of the next Congress in January, 1981, to transmit to the Congress a statement showing the whole number of persons in each state, as ascertained under the decennial census of the population, and the number of Representatives in the House of Representatives to which each state would be entitled under an apportionment of the presently-existing number of Representatives by the method known as the method of equal proportions, no state to receive less than one Member.

6. The defendants are also required, in accordance with the established practice of the Bureau, and the provisions of 13 U.S.C. § 141(c), to prepare and certify an official count of the population of cities and other governmental sub-units within each state. The official count of such cities and sub-units, as prepared and certified by the Bureau, is and must be used by the states to apportion Congressional districts within each state in accordance with the requirement of Art. I, § 2,

cl.3, so that all Congressional districts within a state contain, as nearly as is practicable, equal number of persons.

7. In the State of Colorado, pursuant to Section 44 of Article V of the Constitution of the State of Colorado, as amended, and Section 2-1-101 C.R.S. 1973, as amended, of the statutes of the State of Colorado, the apportionment and determination of Congressional Districts in the State of Colorado is based on the population of each district, as contained in the official count and enumeration prepared and certified by the Bureau in connection with the decennial census.

8. In the State of Colorado, pursuant to Sections 45, 46, 47 and 48 of Article V of the Constitution of the State of Colorado, as amended, and Sections 2-2-101 et seq. C.R.S. 1973, as amended, and Sections 2-2-201 et seq. C.R.S. 1973, as amended, of the statutes of the State of Colorado, the apportionment and determination of Senatorial and Representative Districts for the Legislature (General Assembly) of the State of Colorado is based on the population of each such district, as contained in the official count and enumeration prepared and certified by the Bureau in connection with the decennial census.

9. In the apportionment of Congressional districts within the State of Colorado following the 1970 decennial census, two of the five Congressional Districts allocated to the State of Colorado embrace all or part of the City and County of Denver. In the apportionment of state senatorial and representative districts in the State of Colorado following the 1970 decennial census, eleven of the thirty five state senatorial districts, and eighteen of the sixty five

representative districts embrace all or part of the City and County of Denver.

10. The amount and extent of representation of the City and County of Denver, on local, metropolitan, and regional governmental boards and commissions, such as the Metropolitan Denver Sewage Disposal District No. 1, is governed and directly affected by the population figures contained in the official count and enumeration prepared and certified by the Bureau in connection with the decennial census.

11. The Congress has established numerous programs of federal grants-in-aid to states, cities, and other sub-units that are based on the population of said states, cities, and sub-units, as contained in the official population count prepared and certified by the Bureau in connection with the decennial census, and in connection with the mid-year census authorized under 13 U.S.C § 141 and the collection and publication of general population data authorized under 13 U.S.C. § 181. Among such programs, are State and Local Fiscal Assistance (general revenue-sharing), 31 U.S.C. §§ 1221 et seq., and Comprehensive Employment and Training, (CETA), 29 U.S.C. §§ 801 et seq., under which the City and County of Denver, has received financial assistance from the United States, during the last fiscal year. The amount of federal funds to be received by the City and County of Denver, in the years following the 1980 decennial census will be affected substantially by the official population count of the City and County of Denver that is prepared and certified by the Bureau.

12. It has long been recognized by officials of the Bureau, including the defendant BARABBA, that the procedures employed by the Bureau in conducting the

decennial census, no matter how conscientiously and efficiently administered by the employees of the Bureau, will necessarily fail, and in the past necessarily have failed, to enable employees of the Bureau to personally contact and record substantial numbers of persons actually residing in the United States.

13. The Bureau has been able, through the use of demographic projection, looking to birth, death, and migration statistics and other factors, to make a demographically valid determination of the actual population of the United States as of the census date. The difference between the Bureau's determination of the actual population of the United States as of the census date, and the number of persons personally contacted and recorded by employees of the Bureau during the taking of the census, indicates the approximate number of persons who were not personally contacted and recorded during the taking of the census. During the taking of the 1970 decennial census, the Bureau concluded that there were approximately 10.2 million persons, actually residing in the United States, who were not personally contacted and recorded during the taking of the census. Of these 10.2 million persons, 4.9 million were included in the official count of the population of the United States by a method known as "imputation," and thus were allocated to the states, cities and sub-units of the United States as if they had been personally contacted and recorded during the taking of the census. The remaining 5.3 million persons, referred to by the Bureau as constituting the census undercount, were not included in the official count of the population of the United States by means of "imputation" or other demographic or statistical methods, and thus were not allocated to the official population

count of states, cities, and other sub-units of the United States.

14. On the basis of information and belief, it is alleged that the defendant BARABBA and the appropriate officials of the Bureau have determined that the numbers of persons actually residing in the United States as of the 1980 census date that will not be personally contacted and recorded by employees of the Bureau during the taking of the 1980 decennial census will be at least the same, and in all likelihood greater, than the number of persons actually residing in the United States that were not personally contacted and recorded during the taking of the 1970 decennial census.

15. The Constitution and laws of the United States impose upon the Secretary and the Director the duty to make a tabulation of the total population of the United States, and of every state, city and sub-unit of the United States that includes all persons found by the Bureau to actually reside in the United States and reasonably capable of being determined to reside within each state, city, and sub-unit of the United States at the time of the taking of the decennial census, even if such persons have not been personally contacted and recorded by employees of the Bureau during the taking of the decennial census.

16. Defendants have commenced and have continued to conduct the 1980 decennial census and the procedures thereunder in and within the City and County of Denver. In implementing those procedures, Defendants calculate a factor, known as the "vacancy rate" which, after being applied to the total number of living units, produces a negative correction factor to

the initial population figure computed from the number of living units and the number of persons calculated and estimated to reside in each living unit.

17. In accordance with the Local Review Program of the Bureau, Denver has been informed of the "vacancy rate" to be used by the Bureau. That rate is arbitrary, unreasonable, lacks any rational basis, is based on data collected in a manner which lacked reasonable care and was not calculated to produce a reasonable result.

18. Denver has disputed that "vacancy rate", has offered evidence to the Bureau of a different rate, and has requested from the Bureau the base data supporting the rate proposed to be used by the Bureau.

19. The Bureau has refused to reconsider the "vacancy rate" and refused to disclose the base data supporting the rate it shall use in the 1980 decennial census for Denver and has indicated an intention to close the district offices of the Bureau in the Denver area and transfer the base data and documents away from the Denver area to another part of the United States.

20. Denver has appealed the denial of the request for the public information and records to the Director; the law allows the Director up to six weeks to consider that appeal, without hearing, after his receipt of it in Washington, D.C.

21. As a result of the acts and omissions of defendants the following consequences will ensue in connection with the 1980 census:

a. The report of the Secretary of Commerce to the President of the "tabulation of the total population by states," as required by 13 U.S.C. § 141, will not in

fact contain a tabulation of the actual population of the states, either absolutely, or in relation to each other;

b. The statement submitted to Congress by the President, pursuant to 2 U.S.C. § 2a showing the "whole number of persons" in each state, and the number of representatives to which each state would be entitled under the equal proportions method, will not in fact show the "whole number or persons" in each state, either absolutely or in relation to each other, and cannot in fact show the number of Representatives to which each state properly would be entitled under the equal proportions method based on the actual population of all of the states in relation to each other;

c. In the allocation of Congressional seats within the State of Colorado, and in the allocation of state senatorial and legislative districts, and in the allocation to other local, metropolitan and regional governmental boards and commissions, the residents of the City and County of Denver will receive less proportionate representation in the United States House of Representatives and in the Colorado Senate and House of Representatives and such boards and commissions than the residents of other cities and sub-units in the State of Colorado;

d. In the allocation of federal funds based on the population of cities and sub-units, as contained in the official population count prepared and certified by the Bureau, the City and County of Denver will receive less than the proportionate amount of federal funds that it is entitled to receive according to law.

22. The acts and omissions of Defendants are violative of the Constitution and laws of the United States for the following reasons among others:

a. Art. I, § 2, cl. 3, and the laws of the United States relating to the taking the decennial census and

to the apportionment of Representatives in the House of Representatives, in particular 13 U.S.C. §§ 1 *et seq.*, and 2 U.S.C. § 2a, require that an enumeration be made of all persons determined to be actually residing in the states, cities, and sub-units of the United States, so that the apportionment of Representatives among the several states and the apportionment of Congressional districts within each state can be made in strict compliance with the principle of equal representation for equal numbers of persons. Accordingly they impose an absolute duty on the defendants herein to allocate all persons determined by the Bureau to be actually residing in the United States among the states, cities and sub-units of the United States in which they can reasonably be determined to be actually residing. This absolute duty is not satisfied by allocating only those persons personally contacted and recorded by employees of the Bureau during the taking of the decennial census when the Bureau has determined that substantial numbers of other persons, not so personally contacted and recorded, actually reside in the United States.

b. The methods used by Defendants in conducting the census in Denver and in formulating the population figure for Denver were unreasonable and lacked any rational basis, and their promulgation and use were arbitrary, capricious and an abuse of discretion.

c. The methods used by the Defendants in conducting the census in Denver and in formulating the population figure for Denver were not fairly and rationally suited to achieve and bring about the most accurate population count possible in view of the resources available to the Defendants and the inherent difficulty of the task.

d. The officers, employees and agents of Defendants responsible for taking of the census in Denver and for formulating the poplation figure for Denver did not exercise reasonable care and did not achieve as accurate a result as the Bureau's techniques permitted.

e. The methods used by Defendants in conducting the census in Denver and in formulating the population figure for Denver were and are violative of Art. I, § 2, cl. 3, and the laws of the United States, and further deprives the plaintiffs of important liberty and property interests without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

f. The methods used by Defendants in conducting the census in Denver and formulating the population figure for Denver have the effect of debasing the representation and the vote of persons residing and registered to vote in the City and County of Denver, which is disproportionately undercounted in relation to virtually every other city and sub-unit in the State of Colorado, in violation of Art. I, § 2, cl. 3, with respect to representation in and the election of Members of the House of Representatives of the United States, and in violation of the Fifth Amendment's Due Process Clause, with respect to representation in and the election of Members of the Colorado Senate and House of Representatives.

g. Since the entitlement of the Citiy and County of Denver to federal grants-in-aid under numerous federal programs depends on the official population count of the City and County of Denver, as prepared and certified by the Bureau, the arbitrary, capricious and irrational methods used by the defendants regarding the City and County of Denver deprives Denver of federally established property rights without due process of law, in violation of the

Fifth Amendment to the Constitution of the United States.

h. The refusal of Defendants to consider the data collected and presented, and to be collected and presented, by Denver concerning the "vacancy rate" for Denver and the refusal to disclose the data upon which the rate to be used by the Bureau in the 1980 decennial census is unreasonable, deny Plaintiffs due process of law, and violate, among other laws of the United States, the Freedom of Information Act.

23. The illegal and unconstitutional actions of the defendants, as set forth herein, have caused, and unless restrained by this Court, will continue to cause, the following injuries among others, to the plaintiffs:

a. Plaintiff, WILLIAM H. MCNICHOLS, JR., is a resident and registered voter of the City and County of Denver, like all other residents and registered voters of the City and County of Denver, has been deprived and will continue to be deprived of his right to equal representation in the House of Representatives of the United States, and of his right to have his vote for Members of the House of Representatives weighted equally, in relation to the representation and weight of vote of other residents and registered voters of the State of Colorado who reside outside of the City and County of Denver;

b. Plaintiff, CITY AND COUNTY OF DENVER, will be deprived of its full and fair representation in the House of Representatives of the United States, in that, in the reapportionment of Congressional districts within the State of Colorado following the 1980 decennial census, fewer Congressional districts will embrace part of the City and County of Denver;

c. Plaintiff, CITY AND COUNTY OF

DENVER, has been deprived and will continue to be deprived of substantial amounts of federal funds that are distributed proportionately to cities and other sub-units of the United States on the basis, in whole or in part, of the population of said cities and sub-units, as contained in the official population count, prepared and certified by the Bureau;

d. Plaintiff, WILLIAM H. MCNICHOLS, JR., as a resident and registered voter of the City and County of Denver, like all other residents and registered voters of the City and County of Denver, will be deprived of his right to equal representation in the Colorado Senate and House of Representatives, and of his right to have his vote weighted equally, in relation to the representation and weight of vote of other residents and registered voters of the State of Colorado who reside outside of the City and County of Denver;

e. Plaintiff, CITY AND COUNTY OF DENVER, will be deprived of its full and fair representation in the Colorado Senate and House of Representatives, in that in the reapportionment of state senatorial and legislative districts following the 1980 decennial census, fewer state senatorial and legislative districts will embrace part of the City and County of Denver.

24. As a result of the illegal and unconstitutional actions set forth herein, plaintiffs have suffered, and unless such actions are restrained by this Court, will continue to suffer, great, immediate and irreparable injury, in violation of rights guaranteed to them and obligations imposed upon the defendants by the Constitution and laws of the United States. Plaintiffs have no plain, speedy and adequate remedy at law, and the present action is the only means of securing the relief requested.

WHEREFORE, plaintiffs respectfully pray:

1. That This Court advance this matter on its docket, order a speedy hearing at the earliest practicable date and cause this case to be in every way expedited, so that any relief ordered by this Court in favor of the plaintiffs herein can be implemented in advance of the time that the defendant BARABBA reports the total population of the United States by states to the defendant KLUTZNICK, and in advance of the time that the defendants prepare and certify the official count of the population of the cities and subunits of the United States.

2. That This Court determine and declare the rights and duties of the parties herein, including:

a. Determining the "vacancy rate" for the City and County of Denver for the purposes of the 1980 decennial census;

b. Determining that the methods used by the Bureau in conducting the census and computing the population figure for the City and County of Denver are unreasonable and unlawful in that they lack any rational basis and are not reasonably related to the purpose of the census and that they were not implemented with reasonable care by the Bureau;

c. Declaring the right of the City and County of Denver to have access to, and inspect the records, data and information of the Bureau upon which is based the "vacancy rate" for Denver; and

d. Declaring the duty of the Bureau to take into consideration the data provided and to be provided by Denver in determining the "vacancy rate" for the City and County of Denver.

3. That This Court enjoin Defendants from:

a. Closing the District Offices of the Bureau in the Denver area until this matter is finally determined;

b. Transferring the records, data and information concerning the "vacancy rate" for Denver from the Denver area until this matter is finally determined;

c. Refusing to accept data from Denver concerning the "vacancy rate" for Denver;

d. Refusing to provide Denver with the records, data and information upon which the Bureau is basing their "vacancy rate" for Denver;

e. Certifying, in any way, the population figure for Denver resulting from the 1980 decennial census until this matter is heard and finally determined.

Respectfully submitted.

MAX P. ZALL, #2367
Attorney for the City and County of Denver
GEORGE J. CERRONE, JR., #3430
Assistant City Attorney
Attorney for the Plaintiffs

By /s/
George J. Cerrone, Jr., #3430
353 City and County Building
Denver, Colorado 80202
(303) 575-2665

Name and Address of
Plaintiffs:

William H. McNichols, Jr.
City and County of Denver
350 City and County Bldg.
Colfax and Bannock Sts.
Denver, Colorado 80202

AFFIDAVIT

City and County of Denver
ss.
State of Colorado

WILLIAM H. MCNICHOLS, JR., being first duly sworn and upon his oath, deposes and says that he is the Mayor of the City and County of Denver, State of Colorado, that he is one of the Plaintiffs herein, that he has read the above and foregoing Complaint and that the same is true of his own knowledge, except as to those matters stated therein to be upon information and belief, and as to those matters, he believes them to be true.

Dated: September 2, 1980.

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 80-C-1151

WILLIAM H. McNICHOLS, JR., et al.
Plaintiffs,

v.

PHILIP M. KLUTZNICK, et al,
Defendants.

TRANSCRIPT OF PROCEEDINGS ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND NOMINAL BOND

[COPY]

Proceedings before the HONORABLE JIM R. CARRIGAN, Judge, United States District Court for the District of Colorado, beginning at 11:05 o'clock a.m., on the 3rd day of September, 1980, in Courtroom C203, United States Courthouse, Denver, Colorado.

APPEARANCES.

The Plaintiffs appearing by their attorney, GEORGE J. CERRONE, JR., Assistant City Attorney, Room 353, City and County Building, Denver, Colorado;

The defendants appearing by their attorney, C. SCOTT CRABTREE, Assistant United States Attorney, C330 United States Courthouse, 1929 Stout Street, Denver, Colorado;

WHEREUPON, the following proceedings were held:

* * * * *

[22]

THE COURT: I will withhold ruling and see if there is any objection.

Q. [By Mr. Cerrone] Mr. Sullivan, in your participation in the Local Review Program, did the Bureau of the Census provide to the city any preliminary figures regarding the finding which they made in their census?

A. They provided us on July 23rd with preliminary per capita count of the city along with some additional information, including the methodology arrived at. And one of the factors given us on that date was the vacancy factor that they had arrived at.

Q. And what was that vacancy factor?

A. On that date it was 6.3 percent.

Q. And has it changed since then?

A. As of last Thursday we understand it has been raised to 6.8 percent.

Q. And what was the total number of population which the Bureau has preliminarily indicated to the city?

A. The first figure given us was 455,000 people. The so-called final count that was given us last Thursday was 491,651, so there was an increase of 36,000 during the local review process.

Q Mr. Sullivan, I hand you what's been marked as plaintiffs' exhibit number 2 and ask whether you can identify that.

THE COURT: Excuse me. You said the first figure was

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[27]

MR. CERRONE: Yes, Your Honor. According to the regulations of the Bureau—

THE COURT: I'm just making a record. You may proceed.

MR. CERRONE: It was attached, yes, Your Honor.

Q. [By Mr. Cerrone] Mr. Sullivan, has the City and County of Denver commenced an effort to determine on its own what the vacancy rate for the City and County of Denver is?

A. At the time the original preliminary figures were furnished us, and the clock started running on our review — and I want to point out that part of the stated effort of the Census Bureau by Mr. Barabba was to utilize the expert knowledge of local officials in helping to turn in—

MR. CRABTREE: I'm going to object to that. I don't know that he's qualified as to what Mr. Barabba's intentions were in setting up the program. I think we've got the exhibit here.

MR. CERRONE: Your Honor, the exhibit number 1, the very first page of the exhibit, which I assume has been promulgated by Mr. Barabba, indicates that the purpose for the Local Review Program is for the obtaining of the local expertise and knowledge to make the figures that are arrived at by the Bureau of the Census more reliable, and, therefore, more acceptable.

THE COURT: Well, that's argument, I think, and let the witness testify as to what he knows.

A At that time, in an effort to challenge the figures,

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which we were given the opportunity to do, there were a number of things that we were not terribly pleased with. One was the figure given us for the number of housing units in the City and County of Denver. Two, the fact that the vacancy factor was very contradictory to all the evidence that we had. And, three, that we were positive from the preliminary work that we had done while the census was actually being conducted by the Bureau, that there are a great many more than 455,000 people in the City and County of Denver.

As part of that and one of the easiest things to work with — work with the Bureau on, was the vacancy factor. There were a number of factors were brought out in conversations with Mr. Gordon Ashley, the District Manager for the Bureau for the City of Denver, as well as Mr. Ken Ellwenger, who was the Assistant Regional Director, that we would have to agree with and that it was impossible to challenge.

They informed us that if people did not answer the questions, and we were specifically talking about the illegal alien problem at the time, that they did not count them. Under the regulations we had to agree that while there may be a great number of them here, if they refused to answer questions by the Census Enumerators, that it would be very difficult for the Bureau to count them. In those areas we did offer some evidence to them. As you know, there is a program where those people are entitled to food stamps, and we are furnishing a great

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their problems, that probably the easiest way to get to a most accurate count was to work on the methodology

involving the housing units, which are the easiest thing for us to prove or disprove. One, we have a great number of records, some of which we asked the Census Bureau that they had used, such as the water and sewer taps, the response was in the negative. We know how many units were added in the ten years between 1970 and 1980. We asked whether that was taken into account or not, and they replied that it was.

We have to assume that at least some of those units, and there were 35,000 net gain in units during that period, were used by them. Nevertheless, the methodology of the counting of vacant units in the city, as well as the total number of housing units, seemed to be the easiest area for us to work with them on.

We did not start with taking a random sample. What we started with was using their enumeration districts, of which there are 606 I believe it is in the city, in the city limits, and we took the ones that they had pinpointed in cross figures as having the highest vacancy factor and we started there. It was not a random sample, it was a door-to-door taking in those enumeration district, of which we have completed about 25 percent.

We are not taking the census over again, we have no intention of taking the census over again, or the entire city,

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all we are working on is the vacancy factor of the units that they say of the total number of housing units in the city that they say are vacant. Because the methodology is, and, frankly, I'm not sure where they came up with the figure, but they stay—

MR. CRABTREE: Excuse me, Your Honor, I

forget what the question is, but this is a rather rambling dissertation. Could we get back to—

THE COURT: I think it would be a little more orderly if we could do this on a question-and-answer basis, so if something irrelevant and hearsay creeps in at least counsel will have an opportunity to object.

MR. CERRONE: Thank you, Your Honor, I will.

Q. [By Mr. Cerrone] Mr. Sullivan, you indicated that when you initially received the preliminary information from the Bureau of the Census, did you, that is, the city have a doubt as to its accuracy? And this doubt was created by, as you indicate, with some evidence which it has, and you indicated that part of that evidence was water and sewer taps. What else, if any, facts, or elements, entered into the judgment of the city that made them compare with the Bureau of Census figures?

A. The figures we had available from people working in the housing area all the time, such as the Board of Realtors, as to the vacancy factor in the city, and that figure was — that figure was less than three percent.

[32]

Q. And were there any other sources of information which led you, or led the city to believe that the vacancy rate was not as high as the Bureau of Census indicated?

A. We thought we had an accurate count of the housing units through our building records and our assessment records, which, incidentally, are public knowledge, including the owners of such property. Using that figure, and using all the data that was available to us by the Governor's office, Governor Lamm made the chief census person available to us as

well as the Regional Counsel of Governments who are continually updating housing and vacancy factors, the Board of Realtors, Post Office Department, every public agency and every quasi-public agency and public utility that we could check with.

Q. Did you check with the telephone company?

A. I did.

Q And what did their — what was their response?

A. Their response was that — they told us in gross figures the number of residential telephone units that had been installed since 1970 as opposed to now, the figure was considerable.

Q. Do you have that figure available at this time?

A. No, I do not. I have the water tap increase and all the other tap increases.

Q. Does the city intend to continue its local efforts in attempting to determine a vacancy rate?

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[35]

figure of population for the City and County of Denver was for 1970?

A. 1970 was 514,800.

Q. To your knowlege, the representation of the City and County of Denver is based upon that number?

A. That's correct.

THE COURT: 514,800?

THE WITNESS: Yes, sir.

Q. [By Mr. Cerrone] So a decrease in that number will quite logically mean a decrease in the number of representatives and senators in the state legislature?

A. That is correct.

Q. And likewise regarding the people that are

represented by the two congressional representatives that we are speaking of?

A. The First and Second Congressional Districts, yes.

Q. And a reduction in that number will also mean a reduction in the number of federal and state funds that are given to the city, which are based on population?

A. That is correct.

MR. CERRONE: Your Honor, I have no other further questions of this witness at this time.

THE COURT: Let me just clarify something. That figure of 30 million to 35 million as last year's grant is based, at least partly, on population figures, is that all

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[47]

but just so that I can be on the record.

THE COURT: All right.

MR. CRABTREE: Because this is the information conveyed to me.

That the F.A.R., which stands for Field Address Register, for the Denver office, which is still here, will be kept here and maintained in either the Denver regional office or an office here located in the Denver metropolitan area, which would provide the city the information necessary in the event that that would be ordered produced.

Likewise, we will retrieve the F.A.R.'s for the Lakewood office, which are presently in California, and also put them together with the Denver F.A.R.'s in one central repository so that they could be retrieved.

And then I think maybe we did intentionally make the last part vague because I didn't directly address that with counsel, but I just assumed that if ordered by a Court, the Census Bureau would perform their func-

tion with the personnel they would have to obtain.

THE COURT: Is that the basic agreement, Mr. Cerrone?

MR. CERRONE: Yes, sir, I believe that's fairly stated.

THE COURT: Now, let me just make inquiry about a couple of practical points.

Am I to understand that the city is in the process now of some form of administrative appeal within the Bureau of

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 80-C-1151

WILLIAM H. McNICHOLS, JR., et al.,
Plaintiffs,

v.

PHILIP M. KLUTZNICK, et al.,
Defendants

TRANSCRIPT OF PROCEEDINGS ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

[COPY]

Proceedings before the HONORABLE JIM R. CARRIGAN, Judge, United States District Court for the District of Colorado, beginning at 9:15 o'clock a.m., on the 15th day of September 1980, in Courtroom C203, United States Courthouse, Denver, Colorado.

APPEARANCES:

The plaintiffs appearing by their attorneys, GEORGE J. CERRONE, JR., Assistant City Attorney, and STEVEN J. COON, Assistant City Attorney, Room 353, City and County Building, Denver, Colorado;

The defendants appearing by their attorney, C. SCOTT CRABTREE, Assistant United States Attorney, C330 United States Courthouse, 1929 Stout Street, Denver, Colorado;

WHEREUPON, the following proceedings were held:

* * * * *

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Q. Mr. Licht, would you indicate to the Court the results thus far of the survey which you have supervised and made?

A. We have contacted 72,337 housing units in the City and County of Denver and we find that of those 72,337 that there are 3,825 vacancies. Comparing this to the—

THE COURT: What's that figure? Three thousand—

THE WITNESS: —eight hundred twenty-five.

THE COURT: 3,825.

Q. [By Mr. Cerrone] And what percentage vacancy is that, Mr. Licht?

A. Of those that we did, 5.3. Now when we started out doing the survey, the door-to-door canvassing—

THE COURT: Excuse me, is that vacancy rate as of April 1st, 1980?

THE WITNESS: Yes.

A. In some cases, not all cases; in some cases we couldn't find from the manager of the apartment house what the vacancy was as of April 1st, but the majority of the cases it is April 1st.

The 5.3 vacancy that we show is a high and I'll try to explain it if I can. When we were assigned this duty by the Mayor, we knew that with our limited staff we could not finish the 228,000 units so we thought we would go through those at a — that appeared to have the highest vacancy so we —

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Q. |By Mr. Cerrone| Appeared in what way?

A. From the information that we received from the Census Bureau indicating their vacancy rate. So we took the enumeration districts that had a vacancy rate per the census of 10 percent or more and went through those, and this is why the vacancy rate is at 5.3 when we think it's slightly more than three percent.

The important thing about the results of our survey so far is that while we show a 5.3-percent vacancy for those same districts that the Census Bureau did, they come up with 7,059 vacant units, or a vacancy rate of 9.6. Computing the difference as a percentage, the census has 46 percent more vacant units than we found in our 72,000, or about a third of the city, and we think this is a rather—

THE COURT: How many is that? What was that last figure?

THE WITNESS: The 46 percent, their vacancy for the same enumeration districts was 7,059, and the percentage difference between the 7,059 and our 3,825 is 46 percent. What we attempted to do at that point was to take that error, as we determined it, of 46 percent, and apply it against their overall vacancy rate for the City and County of Denver of 7.1 percent. And that brought the vacancy rate, if we can use the third to apply to the entire population, of 3.834, and we think that's high, but using the same figures, the same enumeration

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districts, and adjusting the vacancy, using the 46-percent error, we come up with 3.834 percent vacancy, based on this one-third sampling — not sample, but

one-third of the city.

Q. [By Mr. Cerrone] Mr. Licht, you indicated that you think that that was high, is this based upon the evidence that you have and your experience in the field?

A. Yes. The experience that I have in the City and County of Denver indicates that as of April 1st, this year.

MR. CRABTREE: Excuse me, Your Honor, I want to make sure we are talking apples and apples and not apples and oranges. And the reason I think that's important is because his experience is as an assessor, his experience is not as a — his function is to count the census. I want to make sure we are talking about the same definitions here, or what a vacancy is, for purposes of assessment and for purposes of—

THE COURT: Do you have an objection, Mr. Crabtree?

MR. CRABTREE: Well, I don't want to just object and say I don't think it's relevant, but if we can get back on the point then maybe I think the testimony would become more relevant. Yes, I'll object to it if he just wants to talk about what he's comparing it to.

THE COURT: All right, you may want to take Mr. Crabtree's remarks into consideration.

MR. CERRONE: Thank you, Your Honor.

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I'll withdraw my last question and ask Mr. Licht whether or not he can identify what I am handing him, which is marked as — for identification as plaintiffs' exhibit number 7.

A. Yes. Plaintiffs' exhibit number 7 is a summary of those enumeration districts that the Assessment Division surveyed, and it shows the number of units

and number of vacants for the Census Bureau, for the Assessor's Office and for the Planning Department.

Q. [By Mr. Cerrone] Mr. Licht, is this a summary—

A. Yes.

Q. —of data?

Is the data which it summarizes available in your office?

A. Yes, it is. There are some 10,000 individual sheets that have at least — or no more than six property addresses on each one that back up this information. So we do have the addresses of those units that we find to be vacant.

Q. And these 10,000 documents which you have in your office are the base data, the data that were the — the sheets that were actually marked by the appraisers, the results and tabulations of which are reflected in plaintiffs' exhibit number 7?

A. That's correct. They were tabulated from the inventory sheets that we identified as exhibit number 6.

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A. At what point in time?

Q. April 1st, 1980.

A. April 1st, no more than three percent.

MR. CERRONE: Your Honor, I have no additional questions of the witness at this time.

THE COURT: All right.

Cross-examination.

CROSS-EXAMINATION

BY MR. CRABTREE:

Q. Mr. Licht, you indicated that the function of

your office is to assess real and personal property, is that right?

A. That's correct.

Q. And that is for the purpose of assessing taxes on the residents in the City and County of Denver, is it not?

A. No, it's for the purpose of making assessments, the taxes are not in our department.

Q. But it is related directly to what taxes will be assessed on individual property?

A. The mill levies are put against our assessments, yes.

Q. All right. Would it be fair to say, Mr. Licht, that based upon that the appearance of an assessor at a Denver city residence door would be viewed as — for purposes of assessing the property as it might relate to potential taxes?

A. Not if we — in most cases if we identify ourselves and say we are from the Assessor's Office and indicate that we

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[30]

A. No, sir.

Q. They could provide then, without any constraint on them, that information, say, to building inspectors, correct?

A. We could.

Q. All right. Are you conducting this survey during the period of time that the Bureau of Census was completing its census?

A. Yes, we were.

Q. Do you recall, Mr. Licht, reading any of the

Local Review Program brochures that came out?

A. After the fact I read a couple.

Q. What do you mean "after the fact"?

A. Well, after we started our review.

Q. Okay. And do you recall seeing in there that the Census Bureau had asked, during the period of time they were conducting their census, asking local communities not to do so because of the confusion it creates?

A. I think I remember reading that. However, we were up against the gun because of the imminent closing of the — your offices and the deadlines that we all know very well.

MR. CRABTREE: May I have just a moment, Your Honor? I want to make sure Mr. Cerrone has a copy of their letter — of a letter from their office.

THE COURT: Certainly.

MR. CRABTREE: I think I shouldn't have assumed that

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Q. And in so making that opinion, did you have to have an opinion regarding the rate of vacancy or occupancy in the City and County of Denver, is that right?

A. On occasion, yes, it has been important.

Q. And has that been offered and admitted?

A. Yes, sir, it has.

Q. And what is your opinion regarding the rate of vacancy in the City and County of Denver?

THE COURT: As of what date?

MR. CRABTREE: What point?

Q. [By Mr. Cerrone] As of April 1, 1980.

A. I would estimate that there is probably a three and a four-percent actual vacancy rate in Denver County on the 1st of April of 1980.

MR. CERRONE: I have no further questions, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. CRABTREE:

Q. Mr. Rees, when you were performing your survey for the city, what were the hours that you were working?

A. Between 7:30 in the morning and 5:30 in the evening.

Q. Did you ever have occasion to go out and contact people at 7:30 in the morning?

A. Okay, I understand what you are asking now. We would usually start about 8:30 in the morning our actual field work.

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MR. CRABTREE: Could I reserve an objection, Your Honor? It's quite lengthy and I haven't seen this before.

THE COURT: Fine. Maybe you'll have a chance to look those over at the noon break. The ruling will be held in reserve.

Q. [By Mr. Cerrone] Mr. Howell, has Doctor Cog made population projections and estimates for the City and County of Denver for the year 1980?

A. Yes, we have.

Q. Were those estimates and projections based upon the studies and the gathering of data as described in plaintiffs' exhibits 8, 9 and 10, and were they also funded by the federal government?

A. Yes.

Q. What was the population estimate and projection for the City and County of Denver in accordance with these studies for 1980?

A. Our January 1, 1980, estimate for the City and County of Denver is 521,300.

Q. I'm sorry, I didn't—

A. 521,300.

THE COURT: January 1, 1980?

THE WITNESS: Correct.

Q. [By Mr. Cerrone] And is there a similar figure for 1979?

[83]

A. Yes, it's — that estimate is 521,700.

Q. For 1978?

A. 522,500.

Q. For 1977?

A. I would have to refer to some of my documents.

Our estimate for the City and County of Denver for 1977 was 522,100.

Q. Are these estimates included in documents which are promulgated by the Denver Regional Council of Governments?

A. Yes, they are.

Q. These documents are promulgated by the Denver Regional Council of Governments in accor-

dance with their normal course of business and are in accordance with the funding that they receive from the federal government?

A. Yes.

Q. Mr. Howell, I have marked — I hand you what's been marked for identification as plaintiff's exhibit number 11 and ask whether or not you can identify it.

A. Yes. This was a 1975 report on our population estimates and actually it presents the population, as I say, we had prepared for each of the years 1970 to 1975.

Q. And this is an official document of the Denver Regional Council of Governments?

A. Yes, it is.

Q. And is it kept in the files of Doctor Cog?

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A. Yes. This is a little report, status areas, that presents our 1980 population estimates by county.

Q. And this is a summary or status as a result of the study that you made in accordance with the procedures you described previously in your testimony?

A. Yes, it is.

Q. And I notice, Mr. Howell, that this is rather short compared to the rest of them, could you explain that?

A. Yes. The full report is on the printing press right now.

Q. So this is a preliminary report?

A. No, it's a summary of a report that will be available this week, but the numbers and the figures in

here are the same that will be in our final report.

Q. There is not going to be any difference between what is in here and what is in your final report?

A. No.

Q. And this effort is funded by the federal government?

A. Yes.

Q. And these figures are used by the federal government?

A. Yes, they are.

Q. And these figures — and what's contained in these documents show, among other things, the estimated projected population of the City and County of Denver?

A. They contain estimated populations for the City and

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County of Denver, not projected.

Q. And you make those estimates in accordance with the procedures set out in plaintiffs' exhibits 8, 9 and 10?

A. Correct.

Q. And you have been doing this for how long? Or, excuse me, how long has the Denver Regional Council of Governments been doing it?

A. For about 25 years, since its existence as the Intercounty Regional Planning Commission.

Q. So the Denver Regional Council of Governments has been making population estimates and projections for 25 years.

A. Correct.

Q. And how long have you personally been in-

volved in this effort?

A. Five years.

MR. CERRONE: Your Honor, the city moves the admission of exhibits 11 through 16.

THE COURT: Any objection to exhibits 11 through 16?

MR. CRABTREE: Can I reserve that, Your Honor, just so I can look through them?

THE COURT: All right. These are official and public records, though, are they not?

MR. CERRONE: Absolutely, Your Honor.

THE COURT: I'll reserve ruling and give counsel an opportunity to look them over.

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[109]

by the enumerator?

A. On a national level we had approximately 85 percent response rate to the census in the mail, so on an average 15 percent. But it would vary probably dramatically from one area to another.

Q. So each enumerator would have significantly less than the 300 addresses or units in an E.D. that they had to contact?

A. That's correct.

THE COURT: That's 300 addresses or living units?

THE WITNESS: Right, addresses, yes.

Q. [By Mr. Crabtree] Could you just briefly, Mr. Ellwanger, indicate what the steps were for the 1980 Census?

A. Okay. Well, in addition to hiring the initial staff that was necessary to — supervisory staff, the

first operation basically was to evelop a mailing list to be used on the census. It was developed from two sources, one source for the core city area would be through a purchase mailing list, in which we would update that mailing list through several post office checks and also by doing a precanvass operation to be sure that before the questionnaires went out on the census day that the addresses that we had were as complete as possible for the City and County of Denver, as an example.

In fringe areas surrounding the City and County of Denver, probably a small — probably a small part of the City and County of Denver, last fall we sent out enumerators to

[110]

actually do a precanvass of the area in which we were unable to purchase a mailing list and actually list every address that existed in that area.

Q. Would that be by personally observing each unit and then recording that?

A. Based with that and pounding on the door to identify what the actual address was of that unit.

Q. Well, then, you, prior to the mailout, had, according to you, an accurate indication of each and every address contained in the area or the enumeration district?

A. Yes, as accurate as is possible through a variety of checks. Then once the address list was developed and the questionnaires were mailed out on March 28th there was a period of time that we waited for the questionnaires to come back in, and which I indicated approximately 85 percent nationally were

returned. When those forms came in they were edited to determine whether they were accurately filled out or not.

We also had several assistance operations, a telephone assistance operation where people could call for assistance in filling out their form, and also some neighborhood assistance centers where people could visit for actual help in filling out the form.

Q. When you say "edited for accuracy," was there any comparison made by the Bureau of a returned questionnaire to

[111]

match up addresses?

A. Yes. The — each questionnaire is checked in to what we call the address registers, and it's by this procedure we identify which addresses did return a form and which did not.

Q. All right. And then the next step?

A. The next step would be to send out a staff of enumerators in what we call the Followup One, in which we attempted to contact each and every address that did not return the questionnaire and determine the status of that address.

Q. And what was being used then as the address comparison?

A. It would have been the master address register that the enumerator took out in the field with them along with a map of the enumeration district. And that enumerator's job was to spot on that map the location of that unit and to obtain an interview or to obtain — well, obtain both a completed interview for an occupied unit or also to obtain certain information

about the vacancy situation as well.

Q. All right. Was the enumerator able to add an address that they found there, or to change some address?

A. Yes, they were. They were instructed to, as they came to a unit, if they do not find it in the register, identify it as a new unit, they were to add it to the register and to obtain an interview.

[112]

Q. Now, after what was Followup One, and that information, what was done with what the enumerators had there?

A. Okay. At this point in time is when we — what we call the preliminary working figures were released on the Local Review Program to the local jurisdictions.

Q. Do you remember approximately when that was, Mr. Ellwanger?

A. It was in late July or early August, I believe, for the City and County of Denver. It varied by district office.

Q. And what did that preliminary working data consist of?

A. It consisted of housing information, the number of housing units, the number of vacant housing units, the vacancy rate, it included population data, population figure, persons per household.

Q. What's the difference between vacancies and vacancy rate?

A. Well, vacancies are just a physical count of the number of vacancies that have been reported at that stage of operation. The vacancy rate was calculated based on the total number of housing units for the ju-

risdiction.

Q. But to be able to report a vacancy, you had to have personal contact by the enumerator?

A. That's correct. That was the instruction that the enumerator had.

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Q. Okay. Let's go to the next step after the preliminary data is provided.

A. Okay. At the same time that the Local Review Program was in process, we started what we called the Followup Two. This effort had two phases to it. The first phase was to follow up on all vacant and deleted lines of the address register. This was a hundred-percent recheck of all of these units to verify that those units were in truth vacant or did not exist as would be indicated by a deleted line on the register. The second phase of the operation was to follow up on field edit cases.

Q. I'm sorry.

A. Field edit cases, the cases that came in that were not complete, information missing on the questionnaire, or some other inaccuracy that we might identify. Also, we had a nonhousehold sources program in which we used some list of driver's licenses, names and addresses of individuals who verify whether we had counted individuals in parts of the community that tend to be difficult to enumerate, the minority areas and also the low-income areas.

Q. Okay. And then after this second followup — well, let me ask you a question about that. On the 100-percent recheck of vacancies, do you use a different enumerator?

A. Yes, a different enumerator is used than the first time. We use the best enumerators we have because at that

[114]

point of the census we tend to keep the good ones and have eliminated from our activities the poorer enumerators that we have, if we have identified any of those, and that enumerator again has to make a contact with someone to identify for sure whether that unit is vacant or not, or is referencing back to April 1st, 1980.

Q. Let me ask you more specifically about the determination of a vacancy. Are there some criteria that the enumerator has to utilize?

A. Yes. We basically count any structure, any unit that has a possibility of someone living in it. We tend to have a situation where unless it's an obvious nonliving quarter situation like simply a garage that it would not have any place above it for someone to live in it, or a barn, or something like this, or a commercial establishment, we instruct our enumerators to list that unit as a housing unit irregardless of the status of that unit as far as its construction or whether it's dilapidated or whatever, for the purpose that we do not want the enumerator to input their values into what someone might live in.

For example, we do not want an enumerator who is going door to door to enumerate to decide that a particular unit is one that they would not live in so thus not indicating that it exists and thus it would not have a chance in that situation to be rechecked on a hundred-percent followup.

[115]

Q. When one is suspected where there is an ap-

pearance that there was no one in what you consider to be a possibly occupiable unit, how did the enumerator verify the status as vacant?

A. Basically we tried to identify someone who was knowledgeable, hopefully the owner or the realtor that was handling the unit, or — if there were indications of such, discuss, talk to the neighbors to identify what the situation of the unit was so we could verify with someone specifically that the unit was either occupied or vacant.

At the end of the first phase of the census, Followup One, we had a number of units that we classified as unclassified units, because we had identified the housing units existed but we were unable to determine at that point in time as to whether that unit was occupied or vacant, and if occupied how many people lived there.

Q. Was the Census Bureau, under its regulations and rules that it had, able to make any kind of estimate about whether there was someone there as of April 1, 1980, or whether it was vacant?

A. We do not deal in estimates when we take a census, and our people were instructed that they had to make a determination specifically by making a contact with someone, they could not just simply say, "Well, I think it's unoccupied" and mark it as vacant. One of the reasons they could not do that is

they had to turn in a census questionnaire and on that questionnaire not only do they collect information about the people that live there but we also collect information about the nature of that housing unit, num-

ber of rooms, and this type of information, which generally cannot be obtained through observation from the outside.

Q. So even with a vacancy the enumerator had to make a base or find additional information besides whether there was someone there or someone was not there?

A. Right, and if they could not they were to classify the unit as an unclassified unit, so we could attempt in the second phase, Followup Two, to again identify the existence of people in that unit or not.

Q. Okay. So in this process then you had to mail out and — you had the mailout and mailback, correct, and you have identified those addresses from which you have not received a questionnaire?

A. Correct.

Q. And you make the initial contact in Followup One to each vacancy, is that right?

A. Well, to each housing unit that we do not have a questionnaire. At that point we would not have known whether the unit was vacant or occupied.

Q. And if they find someone there who did not return a questionnaire, or had not received one, what does the enumerator

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do?

A. The enumerator obtains the interview from a qualified member of the family at this stage of the game and he gets the census information and a complete questionnaire.

Q. Does that result in a further narrowing down of the vacant units?

A. Yes, it does, because that unit would be recorded in the address register to — indicating that it was an occupied unit and showing the number of people living in that unit.

Q. All right. And then Phase Two Followup is a different enumerator going to the remaining vacancies that are listed?

A. The different enumerator going back to all vacancies that were recorded on Followup One.

Q. All right.

A. In other words, if an enumerator in Followup One had reported a dozen vacancies in an E.D., that would be indicated on the address register as a vacancy. We would assign a new interviewer, a different interviewer I should say, an experienced one hopefully in most cases, to go out and actually recheck, identify from someone again that that unit really was vacant. If they did find that it was occupied on April 1st, 1980, then they were to conduct an interview.

Q. So, in other words—

MR. CERRONE: Excuse me, Your Honor, I apologize for

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concerning what steps the Census Bureau would be taking?

A. Yes, there was. A series of mailouts were made beginning, I believe, back in February of 1979.

Q. Did that at that time explain what was called

the Local Review Program?

A. Yes, it did.

Q. Could you just briefly explain what the Local Review Program is?

A. Okay. A Local Review Program initially was the program in two phases that wold have been administered at — the first phase being administered in February of 1980 prior to census day. And the second phase after the Followup One operation that I have described. The original publications that were sent out dealt with the participation of the local jurisdiction in this program, emphasis was placed on being able to relay or relate their data, the jurisdiction's data, to a level that would be consistent with the data that we would provide that jurisdiction on the Local Review Program at the end of Followup One.

That program did change with a letter from the Director of the Bureau, Vincent Barabba, that because of financial restrictions and timing restrictions the program became a single-phase program that was to be administered at the time of Followup One, and which was the situation that was carried out.

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Q. Do you know whether or not the Local Review Program was created by or required by federal statute?

A. No, it was not. It was an effort by the Bureau to try to be responsive to, in my understanding, to concerns that local jurisdictions had expressed after the 1970 Census that they desired to have some input into the census operations.

Q. Likewise are you aware of whether or not any regulations requiring your undertaking the Local Review Program?

A. No, there are not.

|WHEREUPON, Mr. Cerrone entered the courtroom.|

Q. Do you know, Mr. Ellwanger, whether or not the purpose of the Local Review Program was to recheck the entire census?

A. It's stated in the Local Review Program booklets that that is not the purpose of the program. It is a program that's to help improve the coverage of the 1980 Census but not intended to redo the census.

Q. And do you know whether or not the Local Review Program brochure that was initially sent out to the city so indicated what the intent of that program was?

A. Yes, it did.

Q. All right.

MR. CRABTREE: May I have just a moment, Your Honor?

THE COURT: Surely.

MR. CRABTREE: I'm trying to show counsel the exhibits.

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Q. |By Mr. Crabtree| Mr. Ellwanger, let me show you what's been marked for identification purposes as defendants' exhibit C and ask whether or not you can identify that booklet.

A. Yes, I can.

Q. And what is it?

A. It's a technical guide to the 1980 Census Local Review Program.

Q. And is that the brochure which was initially sent out to municipalities regarding the Local Review Program?

A. I believe this is it. I believe this is the second

brochure that was sent out but it is one that was sent to the jurisdictions.

Q. And is this an official publication of the Bureau of Census regarding this program?

A. Yes, it is.

Q. And do you know whether or not that brochure indicates then what the purpose of the Local Review Program was?

A. Yes, it does.

Q. And do you see that inside—

MR. CERRONE: Your Honor, I would object to the line of questioning in that the exhibit hasn't been admitted into evidence as yet.

THE COURT: All right.

MR. CRABTREE: I merely asked him if he sees the inside, I don't want him to read it at this time.

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raising those as a concern to us.

Q. And did you have occasion to assign anyone in your — under your supervision to conduct a spot check on these contested vacancies?

A. Yes, after a meeting that was held on August 18th, in which additional concerns were raised about the vacancy rate, and at the time that we were notified of the city's on-going recanvass of the areas to identify vacancy units I assigned Catherine Busler of my staff, who is a regional technician, to check out the original list of vacancies, vacancy rate problem E.D.'s. Basically there were three E.D.'s that had a very large vacancy rate percentage, and we had staff members actually physically recheck those a third time.

The other E.D.'s, which I think numbered somewhere around 15, or so, we actually did a check in the

office to identify the type of units that we had as vacants to see if there was any possibility that we did have a problem with the vacancy rate in those particular E.D.'s.

Q. All right. So with respect to vacancies, though, you did do a — basically a third check of specific identified problems that were given to you by the city?

A. Yes, we did.

Q. Could you just briefly indicate how you were defining a vacancy again?

A. Okay. Well, as I stated, we have serveral categories

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A. That that was that high compared to what we had started with on the local review, which was approximately 455,000.

Q. All right. At that point in time, when you provided the preliminary figures, your census was still ongoing?

A. That's correct.

Q. As a result of the Local Review Program, has there been any change in the population figure for the City and County of Denver, Mr. Ellwanger?

A. Yes, there was a small change. There has been, it's obvious from the figures I just mentioned, where the preliminary figures were 455,000 and we are now at 491,000 plus, there was a major change in the figures. But from our records on local review we were able to make a determination that the result, specifically of local review, was the addition of 293 housing units and 504 people to the counts for the City and County of Denver.

Again, this was directly related to the Local Review Program, and this would be as a result of comparison of housing unit differences. We also added 106 people in our Lakewood office, that portion of the city that belongs to Denver, as a result of boundary problems that we had on the original maps, and with the original data, we had boundary lines in the wrong place and had credited 106 people to Lakewood when they, in reality, belonged to the City and County of Denver.

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Q. Now, through this local review process, did you identify areas which both, on one occasion, would increase the population or housing counts, and, on the other hand, possibly decrease it?

A. Yes, we had many situations, many situations where we were able to determine that our figures were correct. For example, a number of enumeration districts we identified the reason why the city had a higher housing unit count was basically because they had identified a couple blocks, or a block or two here and there within that enumeration district that did not exist. In other words, the data, the figures they had given us belonged to a different enumeration district than the one that was being challenged.

Q. Now, you said that was 504 people, and what was the total final census?

A. The final population count?

Q. Yes.

A. I believe it was, as it stands right now, 491,651.

Q. And that's the number that the Census Bureau is prepared to certify as the correct population for the City and County of Denver?

A. That's the number that will come out in the next publication of the data, which is called the Final Preliminary Count. Those — that number could change as a result of the processing operations prior to when the numbers have to be

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what you would anticipate would be required?

A. I would think so, yes. Probably more time than that from the standpoint that we would have to, of course, hire 330 people, or whatever it would take at this point, where we did the original operation we had people on staff that were available to fill those positions.

MR. CRABTREE: All right. No further questions. Thank you.

THE COURT: All right. Thank you.

Cross-examination.

CROSS-EXAMINATION

BY MR. CERRONE:

Q. Mr. Ellwanger, you indicated that you were responsible, as the Assistant Regional Director, for supervising seven states, is that correct?

A. That's correct.

Q. What is the approximate population of the people in the seven states, in the seven states that you are responsible for?

A. I really don't know what the answer is. I can tell you what states they are.

Q. What states are they?

A. Arizona, New Mexico, Colorado, Oklahoma, South Dakota, Nebraska and Wyoming.

Q. And you are responsible for the supervision of all of

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those seven states?

A. The operations for those seven states, yes.

Q. And you are responsible for knowing what should be going on in those seven states?

A. That's correct.

Q. And in those seven states, is it really possible for you to personally supervise or personally see what's going on?

A. No, it is not.

Q. In other words, you have to make a lot of assumptions that what is supposed to go on is going on?

A. I have to delegate a lot of activities to people under me that can provide me with the information to insure that a census is being taken properly.

Q. You don't have any personal knowledge as to whether or not what is supposed to have been done was really done?

A. Not a direct personal knowledge, no. I did not supervise any of the enumerators.

Q. Mr. Ellwanger, you indicated that there was a dress rehearsal in 1978 in the LaPlata and Montezuma—

A. Counties.

Q. —Counties, and as a result of that dress rehearsal you determined what you were going to do on the City and County of Denver, or in the metropolitan area?

A. No, that's not true. I was involved in that activity and that was a dress rehearsal of how a census would be taken.

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to check out three enumeration districts, is that correct?

A. That's correct.

Q. But you didn't check — would you describe again, please, how she made that check.

A. She sent enumerators out to verify the accuracy of the first and second reporting of the units being vacant.

Q. She did that herself?

A. No, she did not.

Q. She sent enumerators out?

A. That's correct.

Q. The very same enumerators we have been talking about?

A. Not necessarily. It could have been—

Q. Not the same persons but the same group of people?

A. I would assume so, yes.

Q. And you only did that in three enumeration districts?

A. That's correct.

Q. And this is what you are constantly referring to as the third check?

A. That's correct.

Q. Only three enumeration districts. How many enumeration districts are there in the City and County of Denver?

A. I believe there is basically 670 something, I'm not sure of the exact number.

Q. And did you check any other enumeration districts as a result of this information?

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A. No, I did not.

Q. And you went out and checked three with enumerators and found what?

A. We found no difference in the original count.

Q. In three enumeration districts?

A. That's correct.

Q. Mr. Ellwanger, you went into a long line of testimony regarding categories of housing units that may be vacant, you indicated that some of them were just not there, people just not there, and some were based upon the use of the unit, seasonal, occasional, I'm not sure what else; how do you determine that?

A. By making contact with the individuals that might be there at that point in time, or by making contact with a realtor or finding out who the owner is or identifying it through a neighbor.

Q. How many of them are there in the City and County of Denver?

A. I really don't know. I know from testimony earlier there were 16,600, or something, was mentioned as the vacancy figure. I don't know what the breakdown of those are.

Q. Do you remember the testimony of Mr. Licht to the effect that in one-third of the city there were only 300 units under construction?

A. I was here during the testimony. I don't remember

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A. I'm aware from the preliminary working figures, yes.

Q. What is it?

A. I believe it was 2.2 something, or something to that effect.

Q. So for every unit you find that's not vacant, that it's occupied, it's likely that there will be 2.2 people in it?

A. No necessarily.

Q. Let me see—

A. Average.

Q. On the average?

A. I don't know. I can give you an opinion. My opinion would be that in the units that were added as a result of the second followup, on converting unclassifieds, I would say we are probably looking at a smaller per household than we would on the average, because basically one of the reasons why you have a difficult time finding or enumerating the unit, identifying what it is, is the fact that if you have a single-person household, or if you have a married couple, that it's more difficult to find them at home than it would be with someone who has a family. But that's again just my opinion and my knowledge of what happens on a census.

Q. Is it more difficult to take the census or enumerate persons in the core city than it is on the fringes?

A. In most circumstances, yes.

Q. And, therefore, isn't it more difficult to determine

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Q. What is your business address, Mrs. Busler?

A. 938 Quail Street.

THE COURT: Would you speak a little more loudly, please, because you are aimed in his direction

and I've got to hear it, unless you want to just speak into the mike. You might—

A. 938 Quail Street, Lakewood.

Q. [By Mr. Crabtree] What is your present occupation?

A. I'm a Regional Technician for the Bureau of the Census.

Q. And how long have you been employed by the Bureau of the Census?

A. Five years.

Q. Who is your supervisor, Mrs. Busler?

A. Mr. Ken Ellwanger.

Q. And do you have some people that you supervise in this capacity?

A. Yes.

Q. And have you been involved in the 1980 Census for the City and County of Denver?

A. Yes.

Q. Which office are you in here?

A. I'm a liaison between the Regional Census Center and the Lakewood District Office and the Denver District Office.

Q. Did you have occasion to undertake a specific

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to the fact that we recanvassed and no changes were made and the Planning Board accepted our figures.

Q. Did you have an occasion to have challenges with regard to vacancies?

A. Yes, I did.

Q. And how many enumeration districts were involved there?

A. There were 18.

Q. Out of how many?

A. 18.

Q. Out of how many enumeration districts?

A. In addition to the 85.

Q. But the 18 were on vacancies, correct?

A. That's correct.

Q. And how many enumeration districts were there in the Denver City and County?

A. Oh, out of 681.

Q. And they presented challenges to you on 13 of them.

A. That's correct.

Q. And did you make an effort to resolve those differences?

A. Yes, I did.

Q. What was the process that you undertook?

A. Okay. On five of those enumeration districts I sent out a supervisor and an enumerator.

Q. Was that an experienced enumerator along with the—

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A. Yes, these were our very best enumerators that we retained along with the very best crew leaders and one field operation assistant.

Q. Let me just get the chronology right here. Had the mailout/mailback Phase One Followup and Phase Two check already been done?

A. Yes.

Q. And now you were doing just a spot canvass of those—

A. Yes.

Q. —E.D.'s?

A. Yes.

Q. Okay.

A. They had targeted three E.D.'s about which they were specifically concerned, and so I had our best people check those. And then in looking at the address registers I found two others that I thought merited field checks, and so I checked five of those.

Q. All right. What about—

THE COURT: Excuse me. You said the city challenged three and you found two more and then you said you had checked five—

THE WITNESS: They challenged 18 altogether, Your Honor, but there were three that they targeted as a special concern.

THE COURT: And you checked those three and then you checked

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two additional on your own?

THE WITNESS: Of the additional ones in the field, I checked all the 18.

THE COURT: I just want to make sure five is the total number and not five plus.

THE WITNESS: I checked all 18 but five in the field.

Q. [By Mr. Crabtree] How did you check the remaining? So that would have been 13.

A. Yes. By looking at the address registers and making notes of the comments that were in the remarks column concerning the reasons for the vacancies.

Q. And did — and based on that you were satisfied that that was all that—

A. Yes, because we were not required to recanvass any of those.

Q. Now, with respect to the three that the city specifically identified for you, you sent out a supervisor and an experienced enumerator?

A. Correct.

Q. Based upon that canvass, Mrs. Busler, what was determined with regard to the discrepancy? And without getting into the addresses or the names of the people involved.

A. Okay. On one E.D. their reason for challenging was stated that this was one of the most successful real estate ventures in Colorado and they saw no reason for there to be

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vacancies. The report that was returned by our people, having talked to two managers, both the manager and the assistant manager at this particular complex. There were 73 vacancies there as of April 1st, which was what we had reported originally. These vacancies were due to the fact that some of them were corporate units which were held for occasional use only. Some of them had been — had auctions put on them and were not sold and were not occupied. Some were just not sold. But they showed us their records and gave us numbers of units which were vacant on April 1st.

Q. That was one of the areas—

A. That was one.

Q. —that the city has specifically targeted?

A. Right.

Q. All right.

A. Another one that was specifically targeted was a unit, or a specific building in which we had re-

ported 23 vacancies in an E.D., and the build — and they had given us a building number in that E.D. which they questioned.

Q. The city had?

A. Yes. And when we went to that building we found that it had been converted to an office building two years ago and there were no units in it. And that was the only one that they were complaining about.

Q. All right.

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A. Okay. On a third one they were complaining about 78 vacancies that we had reported and when we went to this address we found that it was a building owned by the Denver Housing Authority, and the Denver Housing Authority had moved everyone under the age of 62 out of this building prior to April 1st.

Q. All right. And that resulted in the 78 vacancies?

A. And those were the 78 vacancies which existed on April 1st.

Q. And that was again confirmed and verified on recount?

A. We talked, yes, we talked to the manager and there were a few people that lived there over the age of 62 but it was being converted to an old people's home. And the balance of the residents had been moved out prior to April 1st. And that was the third one.

And the fourth one was an address they gave us which was a burned-out building, which that would have been a definitional difference. We still considered it habitable and they obviously did not.

Q. But on recheck there were still no people to be found in that building?

A. No. But we considered the unit, or units, vacant and they considered it demolished.

The fifth one I checked out was one that they had reported to us as having heard that there were only four

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vacancies in the building. And we went and talked with the manager of that building who told us that as of April 1st there were 34 vacancies and she gave us the apartment numbers which were vacant on April 1st.

Q. All right. As a result of your check and canvass of those E.D.'s specifically targeted by the city, did that result in any change in the population or number of vacancies?

A. No.

MR. CRABTREE: May I have just a moment, Your Honor?

THE COURT: Yes.

MR. CRABTREE: No further questions.

Thank you.

THE COURT: All right.

Cross.

CROSS-EXAMINATION

BY MR. CERRONE:

Q. Ms. Busler, are you aware of the basis upon which each of the comments were provided by the city?

A. I have the memo that was given to me with their typewritten comments, yes.

Q. And when; what date was it that they gave you those—

A. This material was given to me on August the 6th.

Q. And when did you give them your figures, or your preliminary data?

A. I gave them information on August the 7th.

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but the double vacancy check was tested in those areas.

Q. Now, you indicated in your August 28th letter that an additional check would have little or no effect on the vacancy rate in Denver. What was the basis for that statement, Mr. Schilling?

A. I think my knowledge of the accuracy of the double-checking procedure, and also the fact that there were definitional differences between the procedures that were used by the city and our procedures.

Q. At that point in time, on August 28th, were you aware of the methodology or correspondence that indicated the methodology that Denver had used?

A. Yes, I was.

Q. And did you consider that, in your decision, to not reconduct a third time a vacancy check?

A. Yes, I did.

Q. What about that methodology, Mr. Schilling, that caused you not to redo the census?

A. Well, I think it just is not consistent with ours. We are comparing two different things, and it's obvious to me that our vacancy rate would be higher because of the way we treat certain types of housing units.

Q. Did the Census Bureau's process use any — utilize any estimate?

A. No.

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Q. And what did you see about Denver's methodology?

A. Well, there were a number of things, where a clear determination was not made, and the procedures called for a person to determine that unit to be occupied.

Q. Did you see any indication in the data supplied to you that Denver had made even an initial check of all units?

A. I'm not sure I understand the question.

Q. Did you see any indication that Denver's data indicated that they had contacted even on one occasion each unit?

A. No. I did not look at their data, just their specifications, and so on. I did not make the decision based on reviewing their data.

Q. Were you aware at that point in time that it was based on an estimate of only a portion of the population?

A. Yes.

Q. That was the point I was asking you. Maybe I wasn't clear.

A. Yes, I was aware of that.

Q. You indicated a definitional problem, can you amplify on that a little bit?

A. Well, I think the primary things I set forth in my letter, and one is that the units that are under construction with the doors and windows in place, where the unit is protected from the elements, are counted as vacancies by our definition, they are not by the city's survey.

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And, secondly, a person with a usual residence elsewhere, if they determine that the other residence, the one not in Denver, is their usual residence, then we would have a vacancy here even though that person is — was currently in the unit as of April 1.

Q. And that appears to vary from the definition of the Census Bureau?

A. That varied from the city's survey definitions.

Q. Based upon the Local Review Program, Mr. Schilling, did that indicate that there had been any significant change in the population numbers?

A. No. As I understand it, the Local Review Program added a fairly small number of people to the census results.

Q. Mr. Schilling, during Mr. Ellwanger's testimony, the undercount percentage was brought up and mentioned at 2.5, are you familiar with that factor?

A. Yes, I am.

Q. And how was that determined and utilized?

A. Well, the Bureau of the Census does a number of evaluation studies on their own work, and at some point after the 1970 Census they provided this figure. It was based on a number of studies that were put together to come up with a final estimate.

Q. So that if it were to be suddenly utilized by the Bureau and applied to, say, a city, would you be required to

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apply it to — across the board, say, 2.5 for Denver, 2.5 for Lakewood?

A. Well, it's a national estimate. We don't attempt to apply it locally. And so the use of that 2.5 figure is simply that we count — undercount the nation by 2.5 percent.

Q. Basically did that apply — if you fairly apply it it would apply to every place, to Denver and Lakewood and to Colorado and New York, right?

A. Yes, that would be typical.

Q. So that to apply it to each place would basically result in a wash?

MR. CERRONE: Your Honor, I object to the question in that it's asking for a conclusion, that is, that by adding 2.5 percent to everyone's figure the result is going to be the same and I don't think that the witness is qualified to testify to that. When we are asking with respect to that result the distribution of Representatives in Congress, and so forth, what that additional 2.5 percent is going to do is, I don't think, within the competency of the witness.

THE COURT: Since I've got to decide this, maybe I will ask a question to try to clarify.

Is there some special magic significance or magic difference between 491,000 and 500,001 of the population figure for the City and County of Denver? What is it if there is?

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A. We did not have any procedures for tabulating that kind of information at the local ||level, that will all be done by the computer.

Q. And these are the kinds of data, these are the kinds of information that influenced you to make your decision not to consider the City and County of Denver's data?

A. That's correct.

Q. You don't know what they are; you don't know what they are?

A. I do not know the number of U.R.E.'s in Denver.

Q. Mr. Schilling, in your opinion, did the Bureau of the Census count everybody in the City and County of Denver?

A. I think the Bureau of the Census did the best census that they could do in the City and County of Denver. There will always be an undercount, so the answer to your question is, "No, we did not count everybody."

Q. And do you have any idea what the magnitude of that size of persons who were not counted?

A. No, I do not.

Q. You don't have any estimate?

A. No.

Q. You have no opinion?

A. No.

Q. But the size of the undercount in 1970 was 2.5 percent?

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A. That's correct.

Q. Is it likely that 2.5 percent now—

A. I think there is an excellent chance that we will do as good or a better census than we did in '70, but I can't say that I am positive.

MR. CERRONE: I have no further questions, Your Honor.

THE COURT: All right, Mr. Cerrone.

Any redirect?

MR. CRABTREE: No, Your Honor.

THE COURT: All right. You may step down, Mr. Schilling.

[Witness excused.]

MR. CRABTREE: We have no further witnesses to call. And subject to all our exhibits being admitted, I think they are, we would rest.

THE COURT: All right.

Assuming they are all admitted, and if they are not admitted, check overnight, please, and ask for permission to reopen the evidence for that purpose. And that can apply to both sides.

Do counsel feel the need to make closings?

MR. CERRONE: Your Honor, I would like to make a few comments if I may.

THE COURT: All right.

MR. CERRONE: Your Honor, the City and County of

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Denver is the plaintiff in this matter and is before the Court requesting immediate relief. We are requesting, first of all, the Bureau retain the records in the City and County of Denver which pertain to the 1980 Decennial Census.

We are asking, requesting, Your Honor, that the Court allow Denver access to these records under the following conditions: That the use of those records are for only those purposes concerning the census; that the persons who have access to this information be sworn by the Director of the Bureau, or his delegate, to confidentiality under 13 U.S.C. 23(c); and that the Bureau edit, or cull, the data, which I understand they refer to as F.A.R.'s, without any reference to the persons who provided the information or any sort of data which may

be, in their opinion, deleterious or contrary to law.

However, Your Honor, obviously C and B, my second and third condition, are quite closely related in that I submit that the persons who should be looking at this shall be sworn to confidentiality in the same way that the Bureau personnel are under the same stringent requirements, under the same penalties of law, et cetera.

Additionally, Your Honor, the city is asking the Court to order the Bureau to actively cooperate with Denver in verifying the vacancies. As it was pointed out in the hearing, it's going to be just absolutely untoward if we are simply allowed to use their lists and go out and look at these units

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and come back with a figure that's different than theirs. And there is going to be two opinions, and then there will be three opinions. I think the only workable thing, Your Honor, is for there to be cooperation. The City and County of Denver is ready, willing and able to provide manpower in this cooperative effort, for however long it takes, and, Your Honor, we don't believe that it's going to take that long. I think the testimony is to the effect that it's going to take two to three weeks. I don't think anybody really has a good idea of that, but I don't think it's going to be that long.

And, lastly, Your Honor, we are asking the Court to enjoin the Bureau from using the present population figures that it does have. And, Your Honor, the City and County of Denver is well aware of the fact that by doing so this information is not going to be transmitted, or it's already been transmitted, it's going to cause some sort of problem down the line timewise. But, Your

Honor, the City and County of Denver is convinced that the rights that we are pursuing, particularly the one man, one vote, and a represenatational right, is absolutely too great, too important to be offset by any consideration of time and money.

I asked one of the witnesses, and it really wasn't necessary, to tell the Court when this data, in particular with respect to apportionment of the House of Representatives, is really going to become important; it's going to become important

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at the next election. Now, I'm not naive to believe that that figure is just going to pop up on November 3rd, or whatever it is, two years from now, and it's going to be determined before that for a number of different reasons.

But what I'm trying to say, Your Honor, is that whereas January 1, 1981, is a very important date as set forth in the statute, and so forth, that that is not an immunable date, and this Court has the power and it must exercise its power to do whatever is necessary to make sure that the rights of the people of the City and County of Denver are protected.

Very quickly, Your Honor, and I'll try not to take too much time, I think that the City and County of Denver has met its burden in this hearing with regard to a preliminary injunction with respect to the irreparable injury, and balance of the equities, and the public interest, and, yes, Your Honor, the status quo, because the status quo, as the Court knows, is the status quo, if the Court doesn't stop it, this machine is going to roll on and the machine, of course, is the Bureau.

Very quickly, Your Honor, the issue of exhaustion has been raised but I don't think it's been seriously raised in view of the fact that the Court has de novo responsibility, and also in view of the fact that the Bureau considers the rationale or the reaons for its denial of the city to be statutory, so, therefore, there is no discretion.

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We are not asking for ultimate relief, Your Honor. The ultimate relief we are asking in our Complaint is that we be given more population. Your Honor, I would point out the first prayer of our Complaint asks the Court to expedite this matter in every way, to advance it on its docket, and, Your Honor, the city would maintain that includes — that that includes, and I'm sure it understands that all this was done in a very rushed fashion, the consideration of the Court of considering this preliminary injunction hearing a combination with the permanent injunction hearing. Because, quite frankly, I don't really feel that after — in the event that we get the relief that we are seeking and in the event there is cooperation with the federal government and the city, that there is really going to be a need for a permanent injunction.

Your Honor, I'm not going to recite the brief that our — repeat the brief that the city has submitted in this matter, but I feel very obligated to just mention very quickly that there are a number — no provisions with the — 13 U.S.C. 9(a) that would apply to the matter. We are not going to use this information for purposes other than the census, we are not going to publish it, we don't want to look at the individual questionnaires and reports.

Your Honor, the city has submitted supplemental authorities to the Court, rather than submitting them into evidence I — it's more proper to submit them as additional authorities.

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These authorities are in the form of, all we have at this moment, Your Honor, two orders, one of the District Court of New Jersey, the State of New Jersey, and the District Court for the Southern District of New York, both of which allow disclosure of this data to those particular cities.

THE COURT: Do you know of any authority to the contrary?

MR. CERRONE: Your Honor, the only authority that I am aware of contrary to it is the case of *Seymour* vs. *Barabba* 559 Fed. 2nd 806, D.C. Circuit, 1977. And in that case, Your Honor, Mr. Seymour, the plaintiffs were seeking the information of the Bureau in order to conduct or construct a list for a class action, civil action, and the Court ruled that since the plaintiffs were not seeking the information for purposes of the census that it was not to be allowed.

And, Your Honor, we have no quarrel with *Seymour*, we have quarrel with expanding *Seymour* to what we have here, which is not a use for the making of a list for a class action, not for any other personal purpose, but for the purposes for which the data was collected.

And, Your Honor, we feel that the safeguards, which were employed in both of those cases, namely, the swearing in of employees at the city to the same confidentiality requirements of the Bureau's personnel, as well as the fact that they shall be used only for the census, protect the census.

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I must point out to the Court, I am obligated to point out to the Court, that both of these orders were issued under Rule 26 (c). It's apparent that I am requesting the same or similar relief as a preliminary injunction matter. Your Honor, I don't feel that form should govern over substance. In the event that we are required to make such a motion, in order to fit us four square into those two cases, the city will make such a motion and hope that the Court accepts my oral motion at this time for expedited discovery of these matters.

Your Honor, I think that the city, as I have indicated, has shown a high risk of success, we have shown that the Denver Regional Council of Governments' figures, which are used by the federal government, the procedures which have been funded by the federal government, show that the figures that the Bureau of the Census has come up with the 1980 Decennial Census are suspect.

I think that the other kinds of things which the city has been convinced by — by which the city has been convinced that it has a complaint, namely, the information that we have regarding water and sewer taps, telephone data, the other kinds of things that Mr. Sullivan testified to regarding food stamps, the Board of Realty, building permits, assessment records, information from the Governor's office, the post office, the telephone company, all of these things, Your Honor,

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are telling us the same thing. I don't know whether or not they are all out of — march to the drum of — to the beat of a different drum, or whatever, but they all tell us the same thing.

The irreparable injury, I think, is apparent. Mr. Sullivan has indicated that the representation of the City and County of Denver, of the people of the City and County of Denver is going to be affected as well in the United States Congress as the State Legislature, and that state and federal funds which are allocated on the basis of population shall be reduced. I don't think there is any question as to the public interest that the City and County of Denver is here to propound. And I think that the balancing of equities, Your Honor, is apparent.

We are talking about Constitutional and statutory rights versus time and money.

Unless the Court has any questions, Your Honor, the city would stand on the closing argument and our brief that we submitted to the Court.

THE COURT: All right.

I don't suppose there is anything further in any of these two cases as to which you furnished other than in Law Week or otherwise, because they are both too new.

MR. CERRONE: Your Honor, we got that Friday afternoon.

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THE COURT: All right. Okay, thank you, Mr. Cerrone.

MR. CERRONE: Your Honor, I must say, though, I thoroughly anticipate that the Justice Department is going to appeal, at least the New York one is. The New Jersey one is so old, though, I really don't know what's happening there.

THE COURT: All right. Thank you.

MR. CRABTREE: Your Honor, the defendants have submitted a brief in opposition to the plaintiffs'

motion for summary judgment in which we discuss at some length the requirements set forth by the Tenth Circuit Court for the granting of a preliminary injunction, which has been pretty well established in this Circuit. I won't repeat those, other than to point out that I think one of the real problems here is the city in this case, unlike the direction which the other cases in New Jersey and New York have gone, the city here chose to pursue this case by means of a preliminary injunction hearing, after the defendants agreed some time ago that they would maintain those records. We must then evaluate what the city wants in light of what the test is for the granting of preliminary injunction relief.

It has been stated and restated—

THE COURT: Let me just ask you—

MR. CRABTREE: Yes, Your Honor.

THE COURT: —would you object to our considering this on the merits as if it's also submitted on the contested

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checking the only ones on which there is disagreement, and that would be far fewer and it would take a lot less people and a lot less time. I can't, for the life of me, frankly, see why anybody's privacy is invaded by the remedy which is asked, which, if you swear people, keep the same secrecy that the Bureau is keeping, and you don't give those people anything but an address which the Bureau claims is a vacant address.

MR. CRABTREE: It wasn't a vacant address as of — it was a vacant address as of April 1.

THE COURT: As of April 1. And they go together, one city employee and one Bureau employee, and find out as of April 1 that was or was not a vacant address,

it seems to me that everybody is better served in the public interest. You have a census and the city's not in a position to complain any more that they are being unfairly treated if they don't get proper allocation that they now seek of Congress people, and State Legislators, Senators, Representatives, allocation of federal funds, and so forth.

And I'm very sympathetic with your client because he's sort of in a trap. He sees the law as requiring him to make this ruling, but I sense he's a cooperative person. And is it possible that there is a General Counsel's office that can give a ruling on that?

MR. CRABTREE: Your Honor, I might indicate that at the time I wrote my brief and took the position that I

[PLAINTIFF'S EXHIBIT #2]

[From the Mayor's Office, City and County of Denver]

August 25, 1980

Mr. Leo Schilling, Regional Director
Bureau of the Census
938 Quail Street
Lakewood, CO 80215

Dear Mr. Schilling:

In a meeting with Mr. Ken Ellwenger, Mr. Gordon Ashley and others of your staff on August 18, 1980, several points were raised that we formally request be addressed in the Census Local Review Program as part of our official challenge of August 1, 1980 and amended on August 14, 1980 where we challenged the excessively high vacancy rate.

We have offered, as part of the local review process, to furnish you our back-up data which included the addresses of vacant units, and owners' names as of April 1, 1980. This was explained in the methodology furnished you as done by our Assessment Division which challenged your vacancy factor. The response was verbal and negative to our offer, and that response by Mr. Ellwanger was to the effect that you did not have the budget allowance to use our data to compare to your list of vacant addresses. We hereby formally request that our data be used in determining a true vacancy factor.

We also formally request that you furnish us with the addresses of living units you believe were vacant on April 1, 1980, so that using our resources we can determine the validity of your data which our data shows to

be in error. We do not feel the address of a unit you say was vacant can be construed as confidential since it goes to the very essence of this undercount problem.

As of this date, we have reviewed in the field on a door-to-door basis over 43,000 living units. The results of that review indicate your vacancy rate is over 41% higher than the actual number of vacant units.

This material difference is critical to the future of this City in distribution of State and Federal aid. Based on your preliminary count furnished us and the present grant formulas, we would stand to lose approximately $35 million over the next 10 years.

In addition to the two formal requests outlined above, we also formally request that the Lakewood and Denver District offices be kept open until this question can be resolved on the vacancy factors. Please respond in writing by Thursday, August 28, 1980.

Sincerely,

/s/ W. H. McNichols, Jr.
Mayor

cc: Mr. Ken Ellwenger
Mr. Gordon Ashley
Mr. Alan Canter

[PLAINTIFF'S EXHIBIT #3]

[From the U. S. Department of Commerce, Bureau of the Census, Regional Office, Denver, Colorado 80225]

August 28, 1980

Honorable W. H. McNichols, Jr.
Mayor, City and County of Denver
City and County Building
Denver, Colorado 80202

Dear Mayor McNichols:

This is in response to your letter of August 25, 1980, in which you expressed concern about the Local Review Program housing count vacancy rate.

As you know, these figures represent the counts and status of housing in Denver at the completion of the first phase of the census enumeration. Each housing unit classified as vacant during this initial phase has subsequently been rechecked by a different enumerator to insure that the unit really was vacant on April 1, 1980. If, during this recheck, the vacancy classification was found to be incorrect, then the occupants of the unit were enumerated and added to the census count. Our experience in several census tests and dress rehearsals shows that this 100 percent check of originally reported vacant units results in an accurate count of vacant units.

Differences between local estimates and the census vacancy counts provided in the local review data can occur for a number of reasons. Definitional differences are a major source of such differences. For example, housing units under construction but with the interior

protected from outside elements are classified as vacant in the census, while local vacancy estimates frequently do not include housing units under construction. In addition, housing units occupied by persons with a usual residence elsewhere are classified as vacant by census definition. They are seldom included in local vacancy estimates.

The Bureau of the Census has devoted considerable resources to achieving an accurate count of vacant housing units in the 1980 Decennial Census. The result has been the most accurate measure of vacancy status that could be reasonably accomplished. Additional checking at this point in time would, in our opinion, have little or no effect on the census vacancy rate for Denver city and county. We are, therefore, proceeding with scheduled plans to close the Lakewood district office on August 28 and the Denver district office on September 5.

We cannot comply with your request that we furnish you with address lists of units vacant on April 1, 1980. Census address lists contain confidential information, such as house numbers and street addresses, and are subject to the Bureau policies and procedures governing the handling and safeguarding of confidential materials as prescribed in title 13, United States Code, section 8 and 9.

I would like to take this opportunity to express our appreciation for the excellent working relationship we have enjoyed with Dennis Siglinger and Dave Turk of the Denver City and County Planning Office. The Local Review Program in Denver could well serve as an example of what we had envisioned in our highest expectations for this Program. Messrs. Siglinger and Turk

have, in our opinion, made a major contribution to an accurate census of the city and county.

Please do not hesitate to call on us if we can be of further service in this matter.

Sincerely,

LEO C. SCHILLING
Regional Director

cc: Mr. Vincent P. Barabba
Mr. Daniel B. Levine
Mr. Rex L. Pullin
Mr. Richard C. Burt
Mr. Kendrick Ellwanger

[PLAINTIFF'S EXHIBIT #7]

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* Denver Planning	No. of Units	No. Vacant	% Vacancy
		80	23.3
1763	343	~~85~~	~~24.8~~
1300 Ogden	*431*	*91*	*21.1*
	339		
	277		21.3
1847	~~285~~	59	~~23.0~~
1400 Humboldt	*273*	*21*	*7.7*
	274		
		59	22.2
2602-1731	266	~~48~~	~~20.8~~
1600 Pearl	*261*	*43*	*16.5*
	296		
	205		27.8
2000-1691	~~209~~	57	~~27.3~~
1300 Fox	*149*	*13*	*8.7*
	177		
	341	53	15.5
3702-1927	~~361~~	~~44~~	~~14.9~~
1400 Clayton	*338*	*34*	*10.1*
	339		
	311	25	8.0
2702-1749	~~337~~	~~50~~	~~15.2~~
1000 Lincoln	*275*	*5*	*1.8*
	303		
	227	78	34.4
2701-1747	~~225~~	~~84~~	~~37.5~~
1200 Lincoln	*226*	*7*	*3.1*
	223		
	582	46	7.9
4301-2016	~~437~~	~~42~~	~~12.4~~
800 Dexter	*545*	*24*	*4.4*
	566		

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
4401-623 *1200 Wabash*	775 ~~677~~ *731* **793**	98 ~~92~~ *51*	12.7 ~~13.7~~ *7.0*
2702-1752 *900 Lincoln*	156 ~~154~~ *147* **119**	41 ~~39~~ *27*	26.3 ~~25.7~~ *18.4*
2802-1784 *100 Logan*	322 ~~319~~ *314* **309**	47 ~~41~~ *29*	14.6 ~~13.1~~ *9.2*
2802-1780 *200 So. Grant*	321 ~~326~~ *308* **317**	37 ~~31~~ *31*	11.5 ~~10.8~~ *10.1*
3702-1928 *1300 Detroit*	304 ~~305~~ *292* **284**	38 ~~42~~ *18*	12.5 ~~14.3~~ *6.2*
2802-1783 *100 Logan*	314 ~~316~~ *296* **314**	 ~~53~~ *21*	16.9 ~~17.2~~ *7.1*
2703-1772 *1000 Ogden*	362 ~~357~~ *352* **339**	42 ~~36~~ *31*	11.6 ~~10.4~~ *8.8*
2100-1695 *200 So. Elati*	269 ~~280~~ *244* **312**	49 ~~52~~ *20*	18.2 ~~18.7~~ *8.2*

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
2702-1755	256 ~~258~~	25 ~~27~~	9.8 ~~10.5~~
800 Logan	*274* **239**	*14*	*5.1*
2703-1764	323 ~~327~~	27 ~~28~~	8.4 ~~10.2~~
1200 Downing	*339* **313**	*24*	*7.1*
2703-1769	318 ~~324~~	30 ~~34~~	9.4 ~~11.2~~
1100 Clarkson	*288* **314**	*29*	*10.1*
2701-1736	302 ~~305~~	54 ~~53~~	17.9 ~~17.7~~
1300 Penn.	*300* **310**	*43*	*14.3*
2701-1738	269 ~~271~~	40 ~~48~~	14.9 ~~18.4~~
1200 Logan	*385* **269**	*104*	*27.0*
2701-1745	257 ~~256~~	35	13.6 ~~14.3~~
1100 Lincoln	*254* **324**	*52*	*20.5*
2702-1751	339 ~~337~~	48 ~~55~~	14.2 ~~16.4~~
900 Logan	*333* **339**	*28*	*8.4*
3102-1840	250 ~~273~~	20 ~~42~~	8.0 ~~15.9~~
1700 Gilpin	*293* **290**	*14*	*4.8*

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
502-1573	344 ~~339~~	37 ~~36~~	10.8 ~~10.8~~
2000 Meade	*271* **325**	*24*	*8.9*
3400-1877	326 ~~323~~	40 ~~37~~	12.3 ~~12.0~~
300 So. Gilpin	*359* **323**	*11*	*3.1*
3603-1913	289 ~~47~~	6 ~~5~~	2.1 ~~15.2~~
2800 Steele	*265* **266**	*3*	*1.1*
3102-1842	296 ~~297~~	40 ~~35~~	13.5 ~~12.5~~
1500 Gaylord	*333* **360**	*34*	*10.2*
600-1580	292 ~~290~~	43 ~~44~~	14.7 ~~15.4~~
2400 Federal	*289* **293**	*28*	*9.7*
3102-1838	296 ~~287~~	78 ~~62~~	26.4 ~~23.4~~
1900 Race	*328* **288**	*40*	*12.2*
2703-1767	241 ~~210~~	49 ~~21~~	20.3 ~~10.4~~
1200 Pearl	*221* **238**	*13*	*5.9*
3102-1843	348 ~~350~~	57 ~~37~~	16.4 ~~12.3~~
1600 Williams	*340* **278**	*26*	*7.6*

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
2802-1786 *100 Grant*	261 ~~260~~ *250* **246**	25 ~~30~~ *11*	96 ~~11.5~~ *4.4*
2701-1735 *1400 Grant*	306 ~~303~~ *370* **312**	37 ~~36~~ *58*	12.1 ~~11.9~~ *15.7*
2701-1737 *1200 Logan*	359 ~~355~~ *370* **369**	46 *66*	12.8 ~~13.0~~ *17.8*
2701-1744 *1000 Sherman*	288 ~~289~~ *292* **281**	47 ~~49~~ *39*	16.3 ~~17.0~~ *13.4*
3201-1846 *1400 Humboldt*	266 ~~274~~ *271* **269**	22 ~~26~~ *31*	8.3 ~~10.3~~ *11.4*
3202-1860 *1400 Race*	327 ~~330~~ *329* **308**	27 ~~33~~ *20*	8.3 ~~10.2~~ *6.1*
2701-1740 *1000 Pearl*	218 ~~216~~ *225* **224**	69 ~~70~~ *69*	31.7 ~~33.8~~ *30.1*
3202-1861 *1300 Race*	348 ~~349~~ *339* **327**	46 ~~50~~ *28*	13.2 ~~14.5~~ *8.3*

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
		27	10.1
3702-1924	267	~~28~~	~~10.6~~
1200 York	*267*	*27*	*10.1*
	258		
		193	24.2
8306-699	798	~~124~~	~~21.6~~
Montbello	*827*	*105*	*12.7*
	826		
	613	129	21.0
4301-2013	~~621~~	~~99~~	~~17.8~~
1100 Ash	*619*	*58*	*9.4*
	624		
	338	22	6.5
2902-1803	~~337~~	~~15~~	~~4.8~~
400 S. Pearl	*336*	*7*	*2.1*
	354		
	217		
3202-1863	~~218~~	40	18.4
1100 Race	*237*	*18*	*7.6*
	224		
	284	56	19.7
3201-1845	~~281~~	~~44~~	~~17.2~~
1400 Gilpin	*276*	*35*	*12.7*
	269		
		52	16.3
2703-1765	320	~~49~~	~~16.2~~
1200 Emerson	*308*	*28*	*9.1*
	318		
	374	37	9.9
3202-1859	~~371~~	~~40~~	~~11.0~~
1400 Gaylord	*383*	*34*	*8.9*
	352		

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
		40	11.8
5103-2080	340	~~48~~	~~12.7~~
900 Lincoln	*340*	*3*	*0.9*
	340		
		52	15.8
2702-1753	330	~~61~~	~~18.6~~
900 Sherman	*318*	*30*	*9.4*
	311		
		37	12.3
3201-1856	300	~~38~~	~~13.2~~
1200 Marion	*291*	*30*	*10.3*
	298		
	325	33	10.2
4301-2017	~~324~~	~~32~~	~~10.0~~
700 Albion	*328*	*6*	*1.8*
	314		
	259	27	10.4
2100-1694	~~254~~	~~29~~	~~11.8~~
100 S. Broadway	*222*	*9*	*4.0*
	209		
	326	38	11.7
2100-1696	~~367~~	~~47~~	~~14.1~~
100 Bannock	*299*	*28*	*9.4*
	321		
			14.1
2702-1756	369	~~60~~	~~16.3~~
900 Pearl	*372*	*24*	*6.5*
	377		
	236	53	22.5
2701-1739	~~237~~	~~52~~	~~22.2~~
1100 Pearl	*274*	*34*	*12.4*
	271		

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	269	27	10.0
2803-1790	~~270~~	~~30~~	~~11.2~~
100 Washington	*259*	*9*	*3.5*
	270		
	375	46	12.3
3101-1837	~~367~~	~~38~~	~~10.8~~
2000 Race	*204*	*9*	*4.4*
	207		
		44	12.9
2703-1768	342	~~47~~	~~14.0~~
1100 Pearl	*259*	*25*	*9.7*
	348		
		33	10.2
2703-1762	325	~~39~~	~~12.2~~
1400 Washington	*375*	*14*	*3.7*
	368		
	250	40	16.0
2703-1761	~~254~~	~~42~~	~~16.7~~
1400 Emerson	*380*	*39*	*10.3*
	375		
	342	43	12.6
2703-1770	~~343~~	~~42~~	~~12.7~~
1000 Ogden	*251*	*31*	*12.3*
	341		
	314	34	10.8
3702-1926	~~315~~	~~39~~	~~13.2~~
1300 Elizabeth	*401*	*10*	*2.5*
	270		
	11	0	0.0
3500-1894	~~10~~	~~1~~	~~12.5~~
4100 Garfield	*9*	*0*	*0*
	10		

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
2901-1798 *400 S. Grant*	361 ~~363~~ *332* **338**	56 ~~33~~ *12*	15.5 ~~10.5~~ *3.6*
600-1581 *2300 Clay*	309 ~~306~~ *298* **309**	41 ~~35~~ *19*	13.3 ~~12.0~~ *6.4*
3601-1901 *3300 York*	278 ~~282~~ *307* **284**	26 ~~54~~ *44*	9.4 ~~20.8~~ *14.3*
2601-1727 *1700 Logan*	301 ~~303~~ *304* **308**	38 ~~40~~ *39*	12.6 ~~13.2~~ *12.8*
2601-1725 *1700 Pennsylvania*	358 *358* **336**	48 ~~47~~ *17*	13.4 ~~13.2~~ *4.8*
301-1528 *4200 Hooker*	340 *320* **333**	11 ~~9~~ *2*	3.2 ~~2.9~~ *.6*
301-1530 *3800 Meade*	287 ~~290~~ *280* **282**	15 ~~16~~ *8*	5.2 ~~5.7~~ *2.8*
102-1513 *4400 Perry*	289 ~~285~~ *277* **279**	7 ~~4~~ *3*	2.4 ~~1.5~~ *1.1*

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	305	5	1.6
102-1514	~~304~~	~~6~~	~~2.0~~
4400 Wolff	*303*	*6*	*1.8*
	302		
	452	54	12.0
6810-667	~~454~~	~~45~~	~~10.7~~
3700 S. Ulster	*442*	*6*	*1.4*
	380		
	332	13	3.9
102-1515	~~323~~	~~11~~	~~3.5~~
4500 Vrain	*325*	*5*	*1.5*
	329		
	373	29	7.8
3201-1857	~~366~~	~~7~~	~~2.0~~
1100 Marion	*351*	*11*	*3.1*
	364		
	596	93	15.6
6804-662	~~595~~	~~102~~	~~17.3~~
4600 S. Quebec	*543*	*14*	*2.6*
	599		
		18	5.7
303-1547	315	~~15~~	~~5.0~~
3000 Meade	*459*	*42*	*9.2*
	338		
	25	5	20.0
5300-2099	~~32~~	~~4~~	~~13.3~~
5100 E. Yale	*4*	*0*	*0*
	3		
	342	20	5.9
301-1531	~~347~~	~~8~~	~~2.7~~
3900 Vrain	*316*	*18*	*5.7*
	341		

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	1044	142	13.6
6809-664	~~1090~~	~~125~~	~~12.3~~
3900 S. Oneida	*1029*	*11*	*.1*
	1108		
	344	75	21.8
2601-1728	~~331~~	~~65~~	~~19.8~~
1600 Pearl	*487*	*42*	*8.6*
	379		
	359	62	17.3
2602-1732	~~297~~	~~54~~	~~20.7~~
1700 Washington	*333*	*14*	*4.2*
	323		
	338	12	3.6
301-1529	~~336~~	~~7~~	~~2.3~~
4000 Grove	*326*	*4*	*1.2*
	333		
	212	51	24.1
3901-1946	~~184~~	~~26~~	~~15.0~~
2500 E. Alameda	*181*	*19*	*10.5*
	193		
	216	37	17.1
2602-1729	~~213~~	~~33~~	~~17.7~~
1700 Ogden	*222*	*7*	*3.2*
	203		
	335	74	22.1
3201-1851	~~354~~	~~62~~	~~20.5~~
800 Humboldt	*445*	*32*	*7.1*
	314		
	567	6	1.1
502-1568	~~568~~	~~5~~	~~0.9~~
2700 Meade	*562*	*3*	*0.5*
	556		

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	316	7	2.2
501-1564	~~320~~	~~11~~	~~3.6~~
2600 Vrain	*301*	*3*	*1.0*
	307		
	324	23	7.1
303-1545	~~317~~	~~22~~	~~7.0~~
3400 Perry	*323*	*17*	*5.3*
	312		
	315	11	3.5
34-1879	~~316~~	~~9~~	~~2.9~~
400 S. Race	*318*	*8*	*2.5*
	313		
	99		9.1
5103-2082	~~101~~	9	~~10.2~~
1300 S. Birch	*99*	*2*	*2.0*
	100		
			4.8
302-1541	310	~~14~~	~~4.5~~
3000 Yates	*337*	*3*	*1.0*
	348		
	327		
102-1517	~~326~~	2	0.6
4700 Stuart	*329*	*6*	*1.8*
	332		
	349	22	6.3
301-1532	~~342~~	~~10~~	~~3.3~~
4300 Yates	*339*	*9*	*2.6*
	349		
	311	13	4.2
303-1546	~~301~~	~~12~~	~~4.1~~
3200 Julian	*290*	*5*	*1.7*
	290		

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	394	26	6.6
701-1583	~~386~~	~~22~~	~~6.1~~
1300 Stuart	*378*	*15*	*4.0*
	370		
	326	10	3.1
3400-1878	~~336~~	~~11~~	~~3.4~~
200 S. High	*325*	*10*	*3.1*
	320		
	315	6	1.9
303-1543	~~318~~	~~2~~	~~0.7~~
3600 Julian	*310*	*5*	*1.6*
	305		
	328	21	6.4
502-1574	~~319~~	~~12~~	~~3.8~~
2100 Grove	*329*	*9*	*2.7*
	335		
	75	4	5.3
501-1567	~~71~~	~~3~~	~~4.4~~
2100 Stuart	*71*	*2*	*2.8*
	76		
	353	16	4.5
502-1571	~~351~~	~~18~~	~~5.3~~
2500 Grove	*379*	*8*	*2.1*
	345		
	383	14	3.7
701-1582	~~382~~	~~12~~	~~3.4~~
1400 Perry	*373*	*3*	*0.8*
	367		
		18	5.7
2901-1799	318	~~16~~	~~5.1~~
400 S. Pearl	*322*	*21*	*6.5*
	360		

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	320	17	5.3
303-1542	~~315~~	~~11~~	~~3.6~~
3600 Meade	*294*	*4*	*1.4*
	307		
	301		
5001-2061	~~303~~	7	2.3
300 S. Leyden	*301*	*7*	*2.3*
	302		
2901-1800	303 N.C.	18	6.1
600 S. Sherman	*300*	*7*	*2.3*
	307		
	111	7	6.3
701-1586R	~~105~~	~~4~~	~~4.8~~
1600 Utica	*99*	*6*	*6.1*
	?		
	288	12	4.2
502-1569	~~279~~	~~14~~	~~5.3~~
2600 Lowell	*277*	*3*	*1.1*
	276		
	312	19	6.1
502-1570	~~310~~	~~20~~	~~6.8~~
2700 Hooker	*309*	*16*	*5.2*
	310		
	320	10	3.1
34-1881	~~318~~	~~8~~	~~2.6~~
700 S. Race	*306*	*5*	*1.6*
	307		
	329	6	1.8
2902-1805	~~331~~	~~7~~	~~2.1~~
700 S. Corona	*328*	*6*	*1.8*
	325		

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
34-1884 *600 S. Gilpin*	331 ~~330~~ *326* **319**	10 ~~9~~ *2*	3.0 ~~2.7~~ *0.6*
34-1882 *1000 S. Vine*	330 ~~333~~ *329* **320**	8 *6*	2.4 *1.8*
701-1584 *1600 Wolff*	337 N.C. *353* **334**	10 *7*	3.0 *2.0*
701-1585 *1200 Yates*	352 ~~345~~ *340* **329**	41 ~~26~~ *21*	11.7 ~~8.0~~ *6.2*
702-1588 *1400 King*	294 ~~293~~ *289* **291**	15 ~~11~~ *9*	5.1 ~~3.9~~ *3.1*
702-1589 *1500 Meade*	332 ~~330~~ *314* **309**	10 ~~5~~ *2*	3.0 ~~1.8~~ *0.6*
702-1590 *1700 King*	317 ~~318~~ *328* **327**	26 ~~20~~ *18*	8.2 ~~6.8~~ *5.5*
901-1599 *800 Perry*	41 N.C. *37* **38**	1 *2*	2.7 *5.4*

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	378	3	0.8
901-1605	~~379~~	~~2~~	~~0.6~~
700 Vrain	*376*	*10*	*2.7*
	374		
	353	28	7.9
901-1606	~~354~~	~~18~~	~~6.6~~
600 Wolff	*356*	*31*	*8.7*
	344		
	325	9	2.8
2901-1801	~~327~~	~~3~~	~~1.1~~
700 S. Grant	*324*	*15*	*4.6*
	323		
	349	10	2.9
2902-1804	~~350~~	~~12~~	~~3.5~~
500 S. Ogden	*342*	*8*	*2.3*
	346		
	349	16	4.6
2902-1806	~~347~~	~~17~~	~~4.9~~
700 S. Pearl	*379*	*13*	*3.4*
	341		
4305-2038	212 N.C.	2	0.9
400 Oneida	*212*	*3*	*1.4*
	212		
	327	15	4.6
303-1544	~~322~~	~~13~~	~~4.1~~
3500 Irving	*326*	*10*	*3.1*
	335		
	305	12	3.9
702-1587	~~304~~	~~13~~	~~4.3~~
1300 Perry	*299*	*11*	*3.7*
	306		

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
3001-1814 *1800 So. Pearl*	324 ~~327~~ *304* **298**	7 ~~5~~ *2*	2.2 ~~1.7~~ *0.7*
3002-1822 *2600 So. Pearl*	51 N.C. *51* **50**	1 *0*	2.0 *0.0*
900 Vrain *900 Vrain*	554 445 *445* **529**	67 24 *24*	12.1 5.4 *5.4*
3004-1831 *2400 So. Race*	385 ~~380~~ *380* **398**	25 *6*	6.5 ~~6.8~~ *1.6*
3004-1833 *2400 So. York*	285 ~~286~~ *287* **286**	16 *10*	5.6 *3.5*
3002-1821 *2500 So. Logan*	292 ~~291~~ *285* **281**	21 *12*	7.2 ~~7.3~~ *4.2*
3001-1817 *1600 So. Grant*	391 ~~380~~ *385* **370**	13 ~~9~~ *7*	3.3 ~~2.5~~ *1.8*
3800-1943 *100 So. Steele*	221 *219* **225**	8 ~~6~~ *2*	2.8 *0.9*

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	349	8	2.3
901-1604	~~361~~	~~9~~	~~0.9~~
700 Stuart	*326*	*5*	*1.5*
	331		
REVISED	60,425	6003	9.9
Census Total	60,227	5,567	9.2
Assessment Total	*59,715*	*3,404*	*5.7*
Planning Total	**59,540**	**(Not inc. 701-1586R)**	

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
3001-1812 *2000 S. Ogden*	302 ~~299~~ *293* **274**	15 ~~20~~ *7*	5.0 ~~6.8~~ *2.4*
901-1603 *600 Perry*	331 ~~332~~ *327* **324**	14 ~~17~~ *10*	4.2 ~~5.6~~ *3.1*
3002-1818 *2100 S. Pearl*	290 ~~288~~ *289* **279**	18 ~~15~~ *5*	6.2 ~~5.4~~ *1.7*
3002-1819 *2200 S. Ogden*	290 ~~278~~ *281* **274**	16 ~~13~~ *14*	5.5 ~~4.8~~ *4.9*
3004-1832 *2500 S. Gilpin*	323 ~~325~~ *298* **288**	17 ~~21~~ *6*	5.3 ~~6.6~~ *2.0*
3300-1871 *700 Detroit*	345 ~~337~~ *386* **393**	16 ~~11~~ *7*	4.6 ~~3.6~~ *1.8*
3800-1940 *200 Adams*	307 ~~310~~ *296* **385**	14 ~~10~~ *12*	4.6 ~~3.6~~ *4.1*
3800-1944 *100 S. Monroe*	189 ~~185~~ *185* **185**	13 ~~10~~ *9*	6.9 ~~5.6~~ *4.9*

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	319	20	6.3
4005-1959	~~335~~	~~24~~	~~7.7~~
1800 S. Clayton	*346*	*9*	*2.6*
	320		
	391	15	3.8
4005-1961	~~397~~	~~13~~	~~3.6~~
1800 S. Adams	*375*	*1*	*0.3*
	347		
	288	17	5.9
3901-1949	~~290~~	~~5~~	~~1.8~~
900 S. Adams	*278*	*1*	*0.4*
	278		
	293	4	1.4
3300-1870	~~303~~	~~0~~	~~0.0~~
900 Cook	*241*	*2*	*0.8*
	235		
	63	10	15.9
3901-1951	~~50~~	~~0~~	~~0.0~~
300 S. Jackson	*54*	*3*	*5.6*
	64		
	302	9	3.0
4005-1958	~~303~~	~~10~~	~~3.3~~
2000 S. Cook	*280*	*3*	*1.1*
	301		
	301	7	2.3
3902-1952	~~297~~	~~6~~	~~2.1~~
1100 S. Cook	*298*	*3*	*1.0*
	300		
	321	8	2.5
3004-1829	~~320~~	~~11~~	~~3.4~~
2100 S. Marion	*305*	*10*	*3.3*
	302		

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	284	7	2.5
3004-1830	~~385~~	~~8~~	~~2.8~~
2300 S. Gilpin	*280*	*4*	*1.4*
	276		
	609	19	3.1
3005-605	~~589~~	~~19~~	~~3.2~~
3000 S. Vine	*605*	*4*	*0.7*
	601		
		11	4.1
3003-1824	267	~~7~~	~~2.7~~
1900 S. High	*262*	*9*	*3.4*
	261		
	318	8	2.5
3901-1947	~~385~~	~~9~~	~~3.2~~
3100 E. Alameda	*326*	*7*	*2.2*
	323		
	261	11	4.2
4006-2962	~~276~~	~~8~~	~~3.0~~
2500 S. Cook	*256*	*5*	*1.9*
	251		
	283	6	2.1
4006-1963	~~284~~	~~5~~	~~1.9~~
2400 S. Adams	*281*	*4*	*1.4*
	282		
	291	2	0.7
3902-1955	~~299~~	2	0.7
1400 S. Steele	*292*	*5*	*1.7*
	293		
	2145	644	30.0
7006-691	~~2142~~	~~558~~	~~30.5~~
3100 S. Parker Rd	*1977*	*205*	*10.4*
	2150		

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	299	3	1.0
4006-1967	~~322~~	~~3~~	~~1.0~~
2400 S. Adams	*316*	*3*	*0.9*
	307		
	315	13	4.1
3004-1828	~~313~~	~~11~~	~~3.5~~
2500 S. Vine	*298*	*4*	*1.3*
	300		
	322	11	3.4
3800-1939	~~325~~	~~7~~	~~2.4~~
300 Adams	*315*	*15*	*4.7*
	342		
	285	8	2.8
3902-1953	~~286~~	~~7~~	~~2.5~~
1400 S. Steele	*285*	*4*	*1.4*
	282		
	326	9	2.8
4005-1960	~~329~~	~~1~~	~~0.4~~
1800 S. Cook	*288*	*5*	*1.7*
	301		
	505	12	2.4
4002-606	~~512~~	~~12~~	~~2.3~~
2800 S. Steele	*498*	*8*	*1.6*
	501		
	283	4	1.4
4006-1968	~~284~~	~~4~~	~~1.4~~
2500 S. Monroe	*276*	*0*	*0.0*
	289		
	647	42	6.5
3003-1823	~~219~~	~~8~~	~~4.3~~
2000 S. Marion	*579*	*14*	*2.4*
	579		

1980 CENSUS REVIEW

Revised Census District Census District *Assessment* **Denver Planning**	No. of Units	No. Vacant	% Vacancy
	321	23	7.2
3800-1941	~~321~~	~~29~~	~~9.4~~
200 Cook	*323*	*15*	*4.6*
	333		
	306	3	1.0
3901-1945	~~312~~	~~3~~	~~1.0~~
900 S. Euclid	*298*	*3*	*1.0*
	300		
	340	4	2.1
3300-1872	~~340~~	~~9~~	~~2.1~~
800 Cook	*335*	*5*	*1.5*
	339		
Revised	73,487	7,059	9.6
Census Total	72,966	6,463	8.9
Assessment Total	*72,337*	*3,825*	*5.3*
Planning Total	**72,399**		

[PLAINTIFF'S EXHIBIT #17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

WILLIAM H. McNICHOLS, Jr., et al.,
Plaintiffs,

v.

PHILIP M. KLUTZNICK, et al.,
Defendants.

CIVIL ACTION NO. 80-C1151

REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiffs request Defendants to produce and permit Plaintiffs and their agents to inspect and make use of the Follow-Up Address Register (FAR) and any and all other documents relating to the taking of the 1980 Decennial Census in the City and County of Denver for use in connection with the review of the data used in computing the population figure for the City and County of Denver within the time as determined by law but no later than 30 days from the date of this Request under the following conditions:

1. That such data and information shall be used only for purposes of the Census;

2. That each and every person having access to the data and information be sworn to confidentiality under 13 U.S.C. (c):

3. That the Bureau edit out any references to the

providers of information contained therein.

Please produce the requested documents in Room 353, City and County Building, Denver, Colorado 80202.

Respectfully submitted,

MAX P. ZALL, #2367
Attorney for the City and County of Denver
GEORGE J. CERRONE, JR., #3430
Assistant City Attorney
Attorneys for Plaintiffs
By /s/
George J. Cerrone, Jr., #3430
Attorney for Plaintiffs
353 City and County Building
Denver, Colorado
(303) 575-2665

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 80-C-1151

WILLIAM H. McNICHOLS, JR., et al.,
Plaintiffs,

v.

PHILIP M. KLUTZNICK, et al.,
Defendants.

ORDER

The plaintiffs in this action challenge the population count reached by the Bureau of the Census for the City and County of Denver, Colorado. The plaintiffs filed a motion for temporary restraining order and a motion for preliminary injunction. In connection with those motions, the Court has heard extensive evidence regarding the Census Bureau's methodology and the City's challenges to the census count. The Court is therefore well acquainted with the issues ultimately to be raised on the merits.

In addition, the plaintiffs have filed a request for production of documents, together with a motion to have production expedited because of the short time period in which census challenges must be determined. In that request, the plaintiffs seek the "Follow-Up Address Registers (FARs) and "any and all other documents relating to the taking of the 1980 Decennial Census in the City and County of Denver."

The thrust of the City's challenges to the census is directed to the Bureau's determination that there were

over 16,000 vacant housing units in the City on April 1, 1980, the effective date of the census. The City's trained and experienced real estate assessment personnel have conducted actual checks of about one-third of Denver's residential real estate units, and as a result of that survey, the City contends that the Bureau has "over-counted" vacancies by a factor of 46%. However, it has been impossible for the City to challenge the Bureau's finding that any particular housing unit was "vacant" on April 1, 1980 because the Bureau has declined to inform the City which units it counted as vacant. For the purpose of contesting the vacancy count, the City seeks to discover the list or register of those dwellings defined by the Bureau as "vacant" in the 1980 census. The Court therefore concludes that the request for production essentially relates only to the FARs, or other documents which contain the vacancy information, and this Order is directed only to those documents. The City has conceded that production of the FARs will satisfy the instant discovery request, despite the over-breadth of its original request for production.

The Bureau in refusing the discovery request, relies primarily on the contention that the information sought is confidential because it falls within the meaning and intent of 13 U.S.C. section 9. The Bureau argues that Congress provided for confidentiality of all census return information in order to assure voluntary compliance by census respondents so that accurate data can be compiled, and that section 9 prohibits the discovery here sought.

In response, the City contends that the purpose of the confidentiality provision would not be undercut by providing vacancy lists, since neither the names of census respondents nor answers to census questions need by provided. In addition, the City argues that 13 U.S.C. section 9 does not bar this doscovery because that sec-

tion only prohibits "use [of] the information furnished for any purpose other than the statistical purpose for which it is supplied." The City asserts that this is precisely the purpose, and the only purpose, for which the information will be used.

The Court has considered carefully the foregoing arguments as well as the evidence presented by both sides in the substantial proceedings held to date. In particular, the Court has considered evidence presented by the Bureau which indicates that definitional differences between the parties as to what constitutes a "vacancy" may account for the difference in vacancy figures obtained by the Bureau and those obtained by the City. Despite this evidence, it appears to the Court that there is no way that the actual effect of the definitional differences can be verified unless the City can discover the FARs, which will tell the City *which dwellings* the Bureau counted as vacant as of April 1, 1980. In other words, to deny the City discovery of this information will essentially deny it any meaningful ability to challenge the Bureau's determination. extremely important constitutional and statutory rights are at stake in this case. The final census count will effect Denver's representation in Congress and both houses of the Colorado General Assembly for the ensuing decade. Moreover, the population figure 500,000 is a threshold of city size affecting both state and federal grants. The Bureau proposes a 1980 census for Denver just over 491,000, whereas Denver claims its population is over 500,000 and that the vacancies in dispute would make up the difference if fully counted. The Bureau has admitted that it undercounted by about 2.5% as a national average in 1970. Obviously an adjustment of that magnitude also would put Denver over 500,000.

Considering the intent and purpose of the confidentiality requirements of 13 U.S.C. section 9, the Court concludes that the purposes of that section can

be maintained in this case without denying the City the right to discovery of documents clearly relevant and indispensable to its case.

Accordingly, it is

ORDERED that the defendants shall produce the FARs for the City and County of Denver to the plaintiffs, or the defendants may, alternatively, produce a list derived from the FARs which simply lists the addresses of those living units in the City and County of Denver which the Bureau has determined to have been vacant on April 1, 1980;

ORDERED that the defendants shall delete from said information any and all names of persons or other references which might identify respondents to the census, either directly or indirectly;

ORDERED that every employee, officer, or agent of the City and County of Denver before having access to the information provided shall be sworn to the same oath of secrecy and confidentiality as required of personnel of the Bureau of the Census;

ORDERED that the plaintiffs shall not allow any person subject to their control and not subject to such oath access to the information made available hereunder;

ORDERED that a copy of this Order shall be served upon every employee, officer or agent having access to the information provided by the Bureau, and every such employee is hereby ORDERED not to disclose such information to anyone not subject to the oath of confidentiality;

ORDERED that the information provided pursuant to this Order shall not be used for any purpose except to seek the correction or adjustment of the population figures for the City and County of Denver for the 1980 census;

ORDERED that the information provided hereunder shall not be publicized or made public in any way;

ORDERED that the defendants may at their option provide one more of their employees, officers or agents to accompany each employee, officer or agent of the plaintiffs in checking and verifying the April 1, 1980, status of occupancy or vacancy of the living units at issue, and in the event that the defendants elect to follow this procedure and the population of the City and County of Denver is ultimately determined to be under 500,000, the defendants may apply to the Court for reimbursement by the City of the reasonable and necessary expenses incurred in making this cooperative effort with the plaintiffs;

ORDERED that the plaintiffs, by accepting the information made available through this Order, accept as a condition thereof the foregoing Order regarding payment of the defendant's reasonable and necessary expenses;

ORDERED that this Order shall be effective immediately as of the date written below; provided, however, that enforcement of the Order is hereby stayed for a period of seven days from that date, and

ORDERED that a copy of this Order shall be served immediately on the United States Attorney for the District of Colorado.

Finally, the Court finds and concludes, pursuant to 28 U.S.C. section 1292(b), that this Order involves a controlling question of law as to which there is a substantial ground for difference of opinion, and that an immediate appeal from this Order may materially advance the ultimate termination of the litigation.

DATED at Denver, Colorado, this 17 day of September, 1980.

BY THE COURT:

/s/ Jim R. Carrigan, Judge
United States District Court

SEPTEMBER TERM
September 29, 1980

Before Honorable Oliver Seth, Chief Judge, Honorable Jean S. Breitenstein and Honorable William E. Doyle, Circuit Judges

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WILLIAM H. McNICHOLS, JR., et al.,
Appellees,

v.

PHILIP M. KLUTZNICK, et al.,
Appellants.

No. 80-8043
(D.C. No. 80-C-1151)

This matter comes on for consideration of appellants' petition for leave to appeal pursuant to 28 U.S.C. 1292(b).

Upon consideration whereof, the petition for leave to appeal is granted.

HOWARD K. PHILLIPS
Clerk

By: /s/
Robert L. Hoecker
Chief Deputy Clerk

SEPTEMBER TERM
September 29, 1980

Before Honorable Oliver Seth, Chief Judge, Honorable Jean S. Breitenstein and Honorable William E. Doyle, Circuit Judges

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WILLIAM H. McNICHOLS, JR., et at.,
Appellees,

v.

PHILIP M. KLUTZNICK, et al.,
Appellants.

No. 80-2023
(D.C. No. 80-C-1151)

This matter comes on for consideration of appellants' motion for stay pending appeal in the captioned case.

The Court has today by separate order granted appellants' leave to appeal under 28 U.S.C. 1292(b).

Upon consideration whereof, appellants' motion for stay is granted. The order of the United States District Court for the District of Colorado entered September 17, 1980, in the captioned case is stayed until further order of this Court.

On or before October 6, 1980, each party shall file with the Court a written statement as to the need for, and desirability of, an expedited appeal.

HOWARD K. PHILLIPS
Clerk

By: /s/
Robert L. Hoecker
Chief Deputy Clerk